ANNEX II TRANSLATED VERSION

**WORK FOR FOREIGN SEAFARERS IN DIS
IN RELATION TO THE DANISH AUTHORITIES**

2006 – 2015

Contents

Abbreviations 2
Previous history 2
Statistics 3
Visits abroad 4
Liaison Officer Manila 5
Danish Eastern High Court Judgment of 4 November 2014 6
Revised decisions after the Danish Eastern High Court judgment 8
Retention/set-offs in benefits for Filipinos 12
The Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) 16
The National Board of Industrial Injuries 17
The Danish Maritime Authority 18
Danish Shipowners' Accident Insurance Association 21
The Council of Appeal on Health and Safety at Work 28
The Ombudsman – languages 29
Ministry of Business and Growth – digitisation and languages 30
The Danish tax authorities (SKAT) 31
Danish Labour Market Supplementary Pension (ATP) 33
Payment Denmark – child support for EU citizens 34
Social convention with the Philippines (and India) 35
The Danish Association of Navigating Officers and the Danish Engineers' Association 36
"Leopard" 36
The National Board of Industrial Injuries 38
Portuguese seafarer – the municipality and the Danish tax authorities 43
Polish seafarer – all issues 45
Spanish seafarer – old-age pension 47
Concluding remarks 48

Abbreviations

AMOSUP	Associated Marine Officers' and Seamen's Union of the Philippines
ASK	National Board of Industrial Injuries (Arbejdsskadestyrelsen)
AST	Council of Appeal on Health and Safety at Work (Ankestyrelsen)
EET	Loss of earning capacity (Erhvervsevnetab)
ph	Filipino
PHP	Philippine peso
POEA	Philippine Overseas Employment Administration
ska	Date of injury (skadesdato)
UFDS	Danish Shipowners' Accident Insurance Association (Ulykkesforsikringsforbundet hos Dansk Søfart)
ØL	Danish Eastern High Court (Østre Landsret)

Previous history

In 2003, the SID launched a massive campaign against DIS with full-page advertisements in Danish newspaper and with its point of departure in claims that foreign seafarers in DIS were treated miserably, especially in case of industrial injuries. In addition to the full-page advertisements with slogans like "A Filipino over board? – He'll damn well have to swim home!", the SID described a number of specific case stories in its professional journal on the case consideration of industrial injuries in Denmark. These stories were followed up by articles in the newspaper "Politiken".

The DSRF chose to make its own investigation of the said case stories in both Denmark and the Philippines. The investigations resulted in a special edition of our professional journal published on 23 November 2003. The conclusion was that the SID campaign had been based on distorted data, but that there were real problems because injured foreign seafarers did not have any representation in Denmark vis-à-vis the Danish authorities.

The problems were subsequently debated by the DIS Contact Committee and the DIS Main Agreement was revised on 26 October 2005 with, inter alia, the following new contents in section 7:

Subsection 5: Danish trade unions may attend to the interests of foreign seafarers in connection with issues arising from Danish law.
Subsection 6: In case of reported industrial injuries or deaths, the relevant Danish trade union shall be informed.
Subsection 7: For meeting the provisions of subsections 5 and 6, an administration fee shall be agreed upon.

During 2006 and 2007, a system was developed, with many problems related to registration and payment, which were more or less solved through a compromise with the shipowners' associations in 2007. However, it has been necessary to follow up on the reporting system on an on-going basis and, by way of example, it can be mentioned that in July 2013 we made a complaint to Torm after having analysed the shipowner's reports in 2012-2013; it turned out that 22 reports had been delayed by more than 1 month, and 7 of these reports had been delayed by more than 8 months, and 3 reports had been delayed by more than 1 year. In one of these cases, the report was rejected by the National Board of Industrial Injuries due to late reporting.

The system that was put into function contains the following:

* All foreign seafarers sign a general proxy when being employed, which makes it possible to inform the trade unions about industrial accidents.
* CO-SEA receives a copy of all reports on industrial injuries.
* CO-SEA draws up a monthly overview, which is forwarded to the Danish Shipowners' Association.
* The Danish Shipowners' Accident Insurance Association draws up a monthly overview, which is forwarded to the Danish Shipowners' Association.
* The Danish Shipowners' Association compares the two overviews and clarifies any disagreements with CO-SEA.
* The three trade unions involved receive payments from the shipowners in accordance with the agreement.
* CO-SEA considers each individual report on industrial injuries.
* When the report is considered suitable for a possible compensation (specifically, a basic criterion of signing off due to the injury is used), material will be forwarded to the injured person consisting of:
    1) An information brochure of 8 A5 pages, which was drawn up in early 2008 in three versions (adjusted for the Philippines, India and – at a later point in time – worldwide). The brochure has been made in cooperation between CO-SEA and the Danish Shipowners' Association.
    2) A proxy.
    3) An accompanying letter.
* The proxies that are returned are distributed among the organisations involved (CO-SEA, the Danish Association of Navigating Officers, and the Danish Engineers' Association) according to the profession of the persons concerned.
* Assistance and support is provided, including for appeals, in relation to tax technical issues, etc.

Statistics

Statistical material – foreign industrial accidents – 2006-2015											
	2006	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**TOTAL**
Reports	144	107	115	152	231	237	248	215	236	192	1877
- hereof Dan. Ass. of Navigating Off.	1	7	4	3	17	19	30	15	20	12	128
- hereof Dan. Eng. Ass.	4	23	20	37	68	63	46	44	59	42	406
- hereof CO-SEA	139	77	91	112	146	155	172	156	157	138	1343
Material forwarded	3	191	21	30	55	43	70	58	66	40	405
- hereof Dan. Ass. of Navigating Off.	0	4	3	2	7	2	6	7	4	1	33
- hereof Dan. Eng. Ass.	0	14	4	7	14	8	15	13	18	12	95
- hereof CO-SEA	3		14	25	34	33	49	38	44	27	281
Returned proxies	1	5	6	12	21	16	23	17	16	8	125
- hereof Dan. Ass. of Navigating Off.	0	1	3	1	3	2	2	0	0	0	12
- hereof Dan. Eng. Ass.	0	0	0	0	2	3	5	3	4	3	20
- hereof CO-SEA	1	4	3	11	16	11	16	14	12	5	93

One may be surprised by the relatively low number of returned proxies (31 per cent). Part of the reason is presumably that many of the seafarers who have been reported sick have been considered "fit for duty" quite fast and their highest wish is to continue as seafarers without any problems as "injured persons". In the Philippines, it is for example difficult to compete with monthly wages of DKK 10,000. Another part of the reason may be general distrust of anything being "free" and a lack of knowledge about Danish trade unions.

Nationalities – reports on industrial injuries – 2012-2015				
	2012	**2013**	**2014**	**2015**
Philippines	134	114	96	82
India	55	44	52	42
Poland	16	24	36	28
Argentina	1	-	-	-
Australia	6	1	2	-
Bangladesh	-	-	-	1
Brazil	4	1	3	1
Egypt	-	1	-	-
England	4	4	9	9
Estonia	1	-	1	-
Ireland	1	-	-	-
Croatia	2	5	3	1
Latvia	1	2	6	6
Lithuania	1	1	-	1
New Zealand	-	2	-	-
Portugal	4	3	4	2
Romania	4	3	4	3
Russia	2	1	1	1
Singapore	1	-	-	1
Sweden	-	1	-	-
South Africa	2	1	2	2
Thailand	1	1	9	6
Tuvalu	1	-	-	-
Germany	-	1	2	-
Ukraine	7	5	6	2
USA	-	-	-	1
Unknown	1	-	-	-
Total	248	215	236	192

Visits abroad

2007	14 August-19 August	Manila	(JI+OS)
	18 December-21 December	Manila	
2008	9 April-15 April	Mumbai	(JI+OS)
2010	1 November-5 November	Manila	
2012	15 June-18 June	Manila	
2013	12 March-16 March	Manila	
	13 July-16 July	Manila	(first meeting with the hostages from "Leopard")
2014	23 January-30 January	Manila	
	15 March-23 March	Manila	(simultaneously with Seahealth)
	9 December-15 December	Manila	(simultaneously with Denmark's Radio)
2015	8 June-16 June	Manila	
2016	10 February-18 February	Manila	
	20 June-26 June	Manila	

The next visit has been scheduled for February 2016.

Notes from the latest visit (June 2015) to Manila:

9 June Rather long meeting with the four from "Leopard" – updates on Danish cases and the situation for each one of them.
Meeting with the four and lawyers from AMOSUP in the evening.

10 June Meetings with AMOSUP in Intramuros.
Meeting with ISAC (International Seafarers Action Committee) in Quezon City.
Meeting with injured person who has ended up with major economic problems after having lost all compensation investments after the 2013 hurricane. He has once again received new compensations, but they have been detained preliminarily due to set-off requirements (see later).

11 June Meeting with MPHRP (Catholic relief organisation for victims of piracy).
Meeting with seriously injured person from 2010 and his family. One of his legs will probably need to be amputated. Various settling problems with the Danish Shipowners' Accident Insurance Association.

12 June Meeting with ISAC.
Meeting with family of deceased seaman after industrial accident. Many and on-going problems with the Danish Shipowners' Accident Insurance Association.

13 June Meeting with injured person 2011. The set-off problems.
Meeting with Edwin Waje (our witness from the Danish Eastern High Court case on calculation principles).

14 June Meeting with the two Manila-based victims from "Leopard".
Meeting with injured person from 2005, who has later involved himself in a number of Mærsk cases.
Meeting with injured person from 2008. Set-off problems and other problems.

15 June Meeting with the General Director of the Ministry of Health's Statistical Department (DOLE), whom I have met previously.
Meetings AMOSUP. Meeting with Dr. Romel Papa NBI (National Board of Investigation), who is involved in assistance to the four from "Leopard". Various meetings with lawyers and AMOSUP President Dr. Oca.
Meetings in the evening with the two from "Leopard" and one of the lawyers from AMOSUP.
Late meeting with ISAC.

Liaison Officer Manila

CO-SEA hired the Philippine ex-seafarer Elissa Lagda (DFDS) as Liaison Officer in Manila starting on 1 November 2012 on a part-time basis and according to Philippine wage standards. We had more or less daily contact with Elissa until the expiry of the contract on 1 November 2014 (due to marriage and removal), during which period Elissa was responsible for the daily contact to injured ex-seafarers (including the hostages from "Leopard").

Elissa had herself been injured in an industrial accident and, prior to her employment, she took a very active part in a complex case process in Denmark.

Our cooperation was very good and satisfactory to both parties, and we regretted to say goodbye to her.

Prior to our hiring her, Elissa visited Denmark for a week during which we visited maritime cooperation partners and the National Board of Industrial Injuries together.

After 1 January 2014, we have been on the lookout for a replacement for Elissa. However, many criteria need to be met and we have had to realise that Elissas are not easy to find.

As an example, we can mention an injured cook from Mærsk, who seemed to have a wide network among Mærsk seafarers and who, upon his own initiative, started to act as a kind of authorised assistance on their behalf simultaneously with the consideration of his own case in Denmark. At one point in time, part of the correspondence with approx. five ex-seafarers went through this person.

We held a meeting in Manila, which Elissa also attended as an observer, and we were about to hire the person concerned as Elissa's replacement. However, it all ended with thumbs down and that was well. A few months later, it turned out that the person concerned made unwritten agreements with the injured persons on whose behalf he was acting against a promised percentage fee if/when the person concerned received compensation. Presumably, he had a contact at the local Mærsk office who informed him about injured seafarers.

We are still in contact with the cook mentioned – and he is a charming person – but we have, of course, cut off all cooperation with him on behalf of others, just as we have found it necessary to warn others against him. Any Danish assistance must, of course and without any doubt, be free of charge to the persons injured.

Danish Eastern High Court Judgment of 4 November 2014

The dispute which was developing in 2011 concerned the principles for calculating a foreign seafarer's loss of earning capacity.

According to the guidelines of the National Board of Industrial Injuries of 1 November 2010, such cases are to be considered as all other cases, and the basis for comparison is the wage that the injured person would have earned if the injury had not occurred compared to the possible wages after the injury.

"In these cases, the assessment of the wage decrease is to be based on the possible wage in the native country with the injury compared to the possible wage without the injury as a seaman. Due to the low wage and price level in the native country, this may lead to the injured person receiving a relatively higher compensation than if he or she had been domiciled in Denmark. However, the compensation must, according to the act on industrial injury insurance, cover the injured person's actual loss. The seaman has a considerably higher income than others with similar tasks in the native country and, without the injury, he would have had an opportunity to retain the high income. In these cases, the loss will therefore be great compared to the possibilities of making an income in the native country."

The specific case in 2011 concerned a female Philippine seafarer who had, after having fallen on a slippery floor in 2009, contracted a meniscus injury, which subsequently resulted in surgical removal of the meniscus in one of her knees. The seafarer did not become seriously disabled, but was incapable of continuing work as a seafarer.

In August 2011, the National Board of Industrial Injuries established that she had suffered a 40 per cent loss of her earning capacity, which was in accordance with a practice whereby the loss is estimated in relation to the wage earning possibilities in countries with low wages, without any recognised calculation basis as such.

The Danish Shipowners' Accident Insurance Association appealed the decision, claiming that the injury was relatively modest and based on a free estimate that could "hardly lead to an adequate constant loss of earning capacity". The Danish Shipowners' Accident Insurance Association argued, furthermore, that there must be some kind of inner connection between the compensation for disability and the loss of earning capacity.

CO-SEA replied with a claim to maintain the 40 per cent. Shortly hereafter, we forwarded a revised opinion for consideration by the Council of Appeal on Health and Safety at Work, pleading for an increase to 85 per cent, based on specific calculations made on the basis of Philippine standard wages as available from the internet.

During the period 2011-2013, another six decisions on loss of earning capacity were referred for consideration by the Council of Appeal on Health and Safety at Work following appeals by the Danish Shipowners' Accident Insurance Association and CO-SEA, respectively.

In March 2013, CO-SEA met the Director General of the Statistical Department of the Philippine Ministry of Labour in Manila and acquired a number of specific statistics on the wage level in the Philippines in order to have more comprehensive documentation.

DECISIONS BY THE COUNCIL OF APPEAL ON HEALTH AND SAFETY AT WORK

The first decision from the Council of Appeal on Health and Safety at Work is from 19 June 2012, when the Council increased the loss of earning capacity from 80 per cent to 90 per cent in accordance the CO-SEA's claim. The reason was that the person concerned could not return to his or her profession.

The next decision was in the case about the female seafarer with meniscus injury, which was published as principled decision no. 77/13 on 5 April 2013. The Council of Appeal on Health and Safety at Work decreased the loss of earning capacity from 40 per cent to 15 per cent, the reason being that the main part of the wage decrease was not a consequence of the industrial injury, but should be ascribed to national wage differences.

Subsequent decisions follow the principled decisions:
50 per cent is decreased to 25 per cent (CO-SEA claim 92 per cent) (decision of the Council of Appeal on Health and Safety at Work ruling of 5 July 2013).
70 per cent is decreased to 35 per cent (CO-SEA claim 85 per cent) (decision of the Council of Appeal on Health and Safety at Work of 24 July 2013).
60 per cent is decreased to 35 per cent (decision of the Council of Appeal on Health and Safety at Work of 20 September 2013).
50 per cent is decreased to 15 per cent (CO-SEA claim 85 per cent) (decision of the Council of Appeal on Health and Safety at Work of 15 November 2013).
50 per cent is affirmed as 50 per cent (decision of the Council of Appeal on Health and Safety at Work of 16 January 2014).

THE COURT CASE

CO-SEA summoned the Council of Appeal on Health and Safety at Work on 25 November 2013 on behalf of a Philippine boatswain who had to be treated leniently after a hawser had broken and hit his right hand. The National Board of Industrial Injuries granted him a 70 per cent loss of earning capacity and the Council of Appeal on Health and Safety at Work reduced this to 35 per cent. Our claim was 85 per cent.

The parties agreed that the case was principled and they were permitted to take the case to the Danish Eastern High Court as the court of first instance. They also agreed not to discuss Philippine income issues at the High

Court because they were well documented. In the summons, we had – in addition to reference to ordinary Philippine wage statistics (approx. DKK 13,000 annually for an unskilled worker in Manila) – documented an annual income of DKK 16,000 from a small street shop owned by the wife of the boatswain.

The court case was held on 23 September 2014 and the boatswain had been called as a witness by CO-SEA. The judgment was given on 4 November 2014 and found for CO-SEA. The loss of earning capacity is established at 85 per cent in the specific case.

In the grounds of the judgment, the High Court establishes that, neither according to the text of the law nor according to practice, there is any legal basis for an estimated reduction of the loss of earning capacity "*solely on the basis of the difference in the general wage level for employees on board Danish ships and persons employed in the Philippines"*. The parties agree that the injured person has always been domiciled in the Philippines and that he "*has, in the future, only a possibility of acquiring an income in the Philippines and that this will amount to approx. DKK 15,000 a year".*

Revised decisions after the Danish Eastern High Court judgment

Following the Eastern High Court judgment, a number of cases were re-considered, either as a consequence of an automatic re-consideration by the Council of Appeal on Health and Safety at Work or as a consequence of a request by CO-SEA.

A total of 20 cases were re-considered, one of which was rejected because the date of injury was prior to 2004 when the text of the law was different.

Overview of the decisions in the 20 cases:

030859-AAA1 (case number ASK, including date of birth)
22 January 2006 ska ph
11 March 2008 ASK EET 75 per cent
10 March 2015 ASK EET 90 per cent
(CO-SEA calculation 89 per cent)

171077-AAA1
27 February 2006 ska ph
11 March 2008 ASK EET 90 per cent
12 March 2015 ASK EET 95 per cent
(CO-SEA claim almost 100 per cent)

170561-AAA1
11 October 2011 ska ph
5 April 2013 ASK EET 70 per cent
14 March 2014 AST EET 25 per cent
9 February 2015 ASK EET 85 per cent
(CO-SEA calculation 88 per cent)

160872-AAA1
26 February 2008 ska ph
14 November 2012 ASK EET 75 per cent
10 March 2015 ASK EET 90 per cent
(still outstanding issue related to the calculation of the annual wages)

020573-AAA1
14 July 2009 ska Indian
5 July 2012 ASK EET 50 per cent
5 July 2013 AST EET 25 per cent
10 June 2015 AST EET <15 per cent
(CO-SEA calculation 92 per cent)
(The reason for <15 per cent is that the person concerned can serve as a cook with a considerable hearing loss. At present, CO-SEA is trying to have the case re-considered by the National Board of Industrial Injuries on the basis of new information).

241062-AAA1
16 August 2011 ska ph
10 April 2013 ASK EET 60 per cent
20 September 2013 AST EET 35 per cent
23 April 2015 AST EET 85 per cent
(CO-SEA calculation 85 per cent)

240682-AAA12
25 October 2009 ska ph
30 August 2011 ASK EET 40 per cent
5 April 2013 AST EET 15 per cent
12 March 2015 AST EET 85 per cent
11 August 2015 ASK EET 85 per cent
(CO-SEA calculation 87 per cent)

010255-AAA1
28 February 2011 ska ph
19 September 2013 ASK EET 50 per cent
16 January 2014 AST EET 50 per cent
4 February 2015 ASK EET 85 per cent
(CO-SEA calculation 88 per cent)

281059-AAA1
13 February 2001 ska ph
rejected

231165-AAA1
29 July 2010 ska ph
22 August 2012 ASK EET 70 per cent
19 March 2015 ASK EET 90 per cent

(CO-SEA claim close to 100 per cent)

170277-AAA1
22 September 2010 ska ph
25 July 2013 ASK EET 20 per cent
12 March 2015 ASK EET 70 per cent
(CO-SEA calculation 80 per cent)

090279-AAA1
14 May 2010 ASK EET 50 per cent
22 December 2010 ASK EET 50 per cent
23 March 2015 ASK EET 80 per cent
(CO-SEA calculation 87 per cent)
(This decision by the National Board of Industrial Injuries has been appealed by the Danish Shipowners' Accident Insurance Association that refers to the fact that the person concerned is educated as a "Licensed Marine Engineer" and that he should therefore – despite an eye trauma – have especially good possibilities on the Philippine labour market. CO-SEA has drawn attention to the fact that the person concerned has served only as a motorman and has, furthermore, acquired various declarations from the Philippines confirming that the education is "worthless" ashore).

081253-AAA1
11 December 2010 ska Indian
4 March 2011 ASK EET 85 per cent
10 March 2015 ASK EET 100 per cent
(CO-SEA claim 100 per cent)

040376-AAA1
4 January 2012 ska ph
20 December 2013 ASK EET 40 per cent
23 March 2015 ASK EET 90 per cent
(CO-SEA claim close to 100 per cent)
(The case has been resumed at the request of CO-SEA after having visited the injured person in Manila. Apparently, the person concerned has – in addition to an objectively established injury of the visual nerve – contracted serious brain injury. In the accident, he fell in rough weather in the galley and hit his head against the kitchen range first and subsequently he hit the floor with the back of his head).

301063-AAA1
11 March 2010 ska ph
18 September 2013 ASK EET 60 per cent
23 March 2015 ASK EET 85 per cent

060264-AAA1
22 September 2011 ska ph
22 August 2012 ASK EET 50 per cent
15 November 2013 AST EET 15 per cent
22 December 2014 AST EET 85 per cent

(CO-SEA calculation 87 per cent)

070764-AAA1
14 September 2006 ska ph
3 July 2008 ASK EET 70 per cent
10 March 2015 ASK EET 90 per cent
(CO-SEA claim close to 100 per cent)

010369-BBB1
16 December 2011 ska ph
30 October 2013 ASK EET 60 per cent
26 May 2015 ASK EET 85 per cent
(CO-SEA calculation 84 per cent)

240758-AAA1
2 January 2011 ska ph
22 August 2012 ASK EET 60 per cent
10 March 2015 ASK EET 85 per cent
(CO-SEA calculation 86 per cent)

140259-AAA1
8 June 2010 ska ph
22 August 2012 ASK EET 75 per cent
10 March 2015 ASK EET 90 per cent
(CO-SEA calculation 87 per cent)

In all the cases, CO-SEA has made an independent calculation for use when considering the case. We have based our calculation on a theoretical annual wage for the Filipinos of DKK 15,000 – which was the basis of the case considered by the Danish Eastern High Court – without considering the extent of the injury and the fact that the injured person is domiciled in the Philippines. Only in especially serious cases, have we claimed a loss of earning capacity of "close to 100 per cent". Of course, it has been a precondition that the injury has resulted in the person concerned no longer being fit for duty as a seafarer (Blue Book cannot be acquired). We have given the result of the calculation in whole numbers, while the decisions are always given in whole numbers that can be divided by 5.

In practice, the average wage in Manila amounts to approx. DKK 13,000 annually for an unskilled worker according to official statistics, and it is our claim that such a wage could theoretically and at best be acquired irrespective of the extent of the injury.

So the calculation is as follows: 100 – (15,000 x 100)/annual wage as a seafarer = loss of earning capacity.
In practice, we and the National Board of Industrial Injuries assume that a Philippine seafarer serves for an average of 9 months a year.

Retention/set-offs in benefits for Filipinos

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION

When a Philippine seafarer is hired through a recruitment agency, the person concerned signs a Philippine Overseas Employment Administration contract (mandatory in the Philippines) and is – as far as we know – not given any additional information about the AMOSUP (Associated Marine Officers' and Seamen's Union of the Philippines) collective agreement. A part of the Philippine Overseas Employment Administration contract covers rules on compensation in connection with injury, including a section called "*Schedule of disability or impediment for injuries suffered and diseases including occupational diseases or illness contracted"*. The schedule divides all injuries and diseases into degrees of disabilities from 1 to 14 with associated compensation. The system is more or less comparable to the Danish table of disability, and in the same manner the system operates with a single compensation at a maximum amount of USD 60,000. In case of death, the compensation amounts to USD 60,000 with an addition for children in the case of ratings, and in the case of officers, the compensation amounts to USD 80,000 with an addition for children.

THE AMOSUP COLLECTIVE AGREEMENTS

The AMOSUP collective agreement includes a disputed regulation on the set-off of compensations in section 10 (agreement for ratings):

"*No claim for compensation according to POEA Rules can be settled prior to a final decision concerning compensations according to the Danish Industrial Injuries Act has been made.*

When meting out compensations according to POEA Rules, any entitlements according to the Danish Industrial Injuries Act should be set off. ..."

PRACTICE IN THE PHILIPPINES

CO-SEA consistently rejects getting involved in issues related to the conditions of the Philippine Overseas Employment Administration, but we cannot avoid getting knowledge about the Philippine judicial practice in this area.

It is usual for injured Philippine seafarers to get in contact with local lawyers (possibly already at their arrival in the Airport of Manila) who undertake to conduct cases of the Philippine Overseas Employment Administration at the Labour Court against a percentage share of any compensation (usually 25 per cent), corresponding to similar systems in the USA.

A judicial practice has developed in the Philippines according to which compensation by the Philippine Overseas Employment Administration must have been meted out no later than four months after the date of injury. This practice makes it more or less impossible to meet the provision on set-offs stipulated in the collective agreement.

In practice, CO-SEA is aware of only one case where a set-off has been effected in connection with a compensation by the Philippine Overseas Employment Administration. The case has been described in the special edition of our professional journal from November 2003 (the Rodolfo Redosendo case).

One of the questions that we have asked ourselves in connection with set-offs in the Philippines is whether it is, after all, legal to pass on information about compensations from the Danish Shipowners' Accident Insurance Association for use in connection with such set-offs. However, a decision has been made that is in support of the legality hereof.

3F brought a case before the Danish FSA about the legality of the Danish Shipowners' Accident Insurance Association passing on confidential information on the granting of compensation from the National Board of Industrial Injuries to the shipowner. The case concerned a Filipino who was injured on board a Torm ship in 2004. In its decision dated 25 August 2008, the Danish FSA concludes:

"The passing on is legitimate pursuant to section 117(1) of the act on financial activities when the Danish Shipowners' Accident Insurance Association passes on information about an employee's industrial injury compensation to the insurance holder (the employer) for use when attending to the interests of the insurance holder in connection with a foreign compensation case deriving from the same incident."

THE DANISH SHIPOWNERS' ACCIDENT INSURANCE ASSOCIATION

In 2015, the Danish Shipowners' Accident Insurance Association has in ten cases, following revised decisions on loss of earning capacity as a consequence of the Danish Eastern High Court judgment, set off Philippine Overseas Employment Administration payments against the Danish compensations to the extent possible.

The Danish compensations in relation to which set-offs have been effected concern:

* Lump sum awards (if they have been technically relevant at the time of the calculation).
* Monthly compensations with retroactive effect (the difference between benefits before revised compensations and benefits after revised compensations which have been given for the period from the first decision on loss of earning capacity until the revision).

In addition, the Danish Shipowners' Accident Insurance Association has frozen the monthly benefits at the original decision on loss of earning capacity in cases where it has not been possible to effect set-offs to their full extent (most cases).

In an accompanying letter to the injured persons, the Danish Shipowners' Accident Insurance Association informs that the set-off is effected as a consequence of claims received from the P&I insurance company against the previous employer, awaiting a decision in Denmark (on the legality of the set-off).

OVERVIEW OF THE TEN CASES

Conversion values have been made in accordance with the daily exchange rate at the time of writing.
Calculations for cash payment include current monthly benefits.

190462-AAA1 (ASK case no., including date of birth)
416/10 (UFDS case no.)
24 February 2015 (UFDS date of notifying set-off)
P&I claim: USD 10,075 = DKK 66,282
Calculation for cash payment after tax as of date = DKK 153,757
Set-off = DKK 66,282

020155-AAA1
136/2011
12 April 2015
P&I claim: USD 60,000 = DKK 410,941
Calculation for cash payment after tax as of date = DKK 24,498
Set-off = DKK 24,498

070764-AAA1
483/2006
30 April 2015
P&I claim: PHP 2,628,000 = DKK 380,000
Calculation for cash payment after tax as of date = DKK 110,247
Set-off preliminarily = DKK 108,570

030859-AAA1
362/2006
30 April 2015
P&I claim: USD 65,000 = DKK 444,000
Calculation for cash payment after tax as of date = DKK 145,414
Set-off preliminarily = DKK 142,982

170277-AAA1
417/2010
30 April 2015
P&I claim: USD 63,000 = DKK 430,302
Calculation for cash payment after tax as of date = DKK 29,497
Set-off preliminarily = DKK 29,497

160872-AAA1
96/2008
30 April 2015
P&I claim: PHP 2,529,379 = DKK 365,666
Calculation for cash payment after tax as of date = DKK 548,587
Set-off preliminarily = DKK 545,766

301063-AAA1
96/2010
30 April 2015
P&I claim: PHP 3,742,051 = DKK 365,666
Calculation for cash payment after tax as of date = DKK 66,549
Set-off preliminarily = DKK 61,867

231165-AAA1
316/2010
30 April 2015
P&I claim: USD 60,000 = DKK 409,811

Calculation for cash payment after tax as of date = DKK 20,247
Set-off preliminarily = DKK 18,526

010369-BBB1
24/2012
1 October 2015
P&I claim: USD 37,459 = DKK 227,646
Calculation for cash payment after tax as of date = DKK 611,540
Set-off = DKK 227,646

240682-AAA0
1 November 2015
P&I claim: USD 313,500 (according to salary statement)
Advance payment: DKK 325,000
Calculation for cash payment after tax as of date = DKK 811,561
Set-off = DKK 313,500

Total set-off claims according to the above: DKK **3,413,814**
At present, total set-offs as of the settlement dates according to the above: DKK **1,539,134**

DISPUTE ON THE RIGHT TO SET OFF IN CONNECTION WITH DANISH COMPENSATIONS

The Danish Shipowners' Accident Insurance Association has not previously held the view that it has been possible to effect set-offs in connection with Danish compensations, but on the occasion of the many extra payments in 2015, the Danish Shipowners' Accident Insurance Association has revised its view (apparently following a requirement by the Danish shipowners).

The legal basis referred to is, on the one hand, a conclusion by analogy to the set-off provision of the AMO-SUP collective agreement (the intention has never been to pay two compensations from two different systems) and, on the other hand, section 29(2) of the act on industrial injury on set-offs "*covering compensation and indemnification amounts of the same nature.*"

CO-SEA does not hold the view that there is a legal basis for effecting the set-off described, merely because compensations of the Philippine Overseas Employment Administration cannot be compared to Danish compensations for loss of earning capacity.

The issue has been considered by lawyers for CO-SEA and the Danish Shipowners' Accident Insurance Association, respectively.

On 6 March 2015, the National Board of Industrial Injuries forwarded a statement in the case according to which "*there is no basis for giving the insurance company the right to be reimbursed for the compensation and indemnification from the industrial injury insurance company."*

Following this statement, the Danish Shipowners' Accident Insurance Association filed a complaint and requested a decision as such.

On 13 May 2015, the National Board of Industrial Injuries forwarded a decision in which it is concluded: "*Against this background, the National Board of Industrial Injuries has decided that the Danish Shipowners' Accident Insurance Association must not pay the Philippine insurance company any amount to which the injured person or his or her surviving relatives are entitled pursuant to the act."*

The Danish Shipowners' Accident Insurance Association has filed an appeal against the decision, and both lawyers in the case have forwarded additional opinions.

On 6 August 2015, the National Board of Industrial Injuries informs that the case will be forwarded to the Council of Appeal on Health and Safety at Work.

Our lawyer has forwarded several enquiries to the Council of Appeal on Health and Safety at Work (most recently on 21 December 2015) requesting it to prioritise the consideration, but we have not received an answer.

On 15 January 2016, CO-SEA forwarded a complaint to the Council of Appeal on Health and Safety at Work. We based our request to prioritise the consideration of the case on the fact that the one case that has been forwarded for consideration by the Council of Appeal on Health and Safety at Work represents ten similar cases with very large economic consequences to the parties involved. Finally: "*We simply cannot understand that neither we nor our lawyer has heard anything from the Council of Appeal on Health and Safety at Work though we have contacted them several times."*

On 22 January 2016, we contacted the Council of Appeal on Health and Safety at Work by telephone and spoke to the "person on duty". It turns out that the set-off case has been created on 9 October 2015 by a case worker who is no longer employed by the Council of Appeal on Health and Safety at Work and this case also includes, for example, our letter of 15 January 2016. We have now been given a case number and have been promised a reply quickly.

On 28 July 2016, the Council on Health and Safety at Work took a decision on this case.
Case no. 2016-5014-47153
"SET-OFFS ARE NOT POSSIBLE."
"There was agreement at the meeting."
Extract from the reasoning:
"Thus, it is not a question of benefits that concern the same type of compensation, which is a condition for set-offsetting, and it is not possible to make an account of the compensation paid item by item. The compensation according to the Philippine regulations on 'permanent total or partial disability' cannot, in our view, be compared to compensation for loss of earning capacity, which replaces the injured person's ability to get an income through work. It is a question of an economic criterion and the medical consequence of the injury does not have any influence in its own right on the issue of whether the injured person is entitled to receive compensation for loss of earning capacity."

The Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP)

During our visits to Manila, we are treated really fine by the Associated Marine Officers' and Seamen's Union of the Philippines. Good treatment (both professionally and "privately") is obviously one of their core com-

petences when it comes to "customers", including trade unions in countries that hire Philippine seafarers for whom the Associated Marine Officers' and Seamen's Union of the Philippines has collective agreements.

However, it is the overall view of the undersigned that the legal department in Manila has neither the capacity nor the willingness to attend to the interests of their members at a level that is acceptable according to our standards. We can, for example, mention that CO-SEA, by routine, informs the Associated Marine Officers' and Seamen's Union of the Philippines unofficially about injured Philippine seafarers. On the other hand, we have never hear that the Associated Marine Officers' and Seamen's Union of the Philippines has, as a consequence hereof, contacted any of these members and offered legal assistance in relation to the regulations of the Philippine Overseas Employment Administration or informed them about their rights at the hospitals in Manila or Cebu owned by the Associated Marine Officers' and Seamen's Union of the Philippines. On the other hand, we have often heard in Manila that – when members contact the Associated Marine Officers' and Seamen's Union of the Philippines on their own and ask for assistance – the advice given is more or less useless.

In connection with our visits to Manila, it is taken seriously when we raise specific cases vis-à-vis the Associated Marine Officers' and Seamen's Union of the Philippines *for as long as* were are in Manila.

Disregarding the Associated Marine Officers' and Seamen's Union of the Philippines's own purposes (administration of funds, generation of surplus and prestige for the owners), it is our subjective perception that the hospitals are presumably the best working divisions of the organisation.

There are potential and realistic possibilities of the Associated Marine Officers' and Seamen's Union of the Philippines's hospital in Manila becoming a central cooperation partner in relation to medical reports that are requested from the Philippines for the National Board of Industrial Injuries.

The National Board of Industrial Injuries

We have an excellent daily cooperation with the National Board of Industrial Injuries and can easily contact key persons with whom we have also had several face-to-face meetings.

Previously, it has been a great problem that many letters for foreigners have been forwarded without a translation, but this problem has gradually been minimised. On the other hand, translations can often delay the case consideration for quite some time, especially in case of sickness in the division concerned. Occasionally, we request letters without a translation and then we inform the injured person directly about the contents.

We have noted that it takes quite some time to take a decision in many cases and that the decisions taken are often characterised by a large element of being "mere guesses". This was especially the case with the decisions taken on loss of earning capacity prior to the Danish Eastern High Court judgment where no decisions had previously been considered specifically in accordance with an understanding of the wage level in low-pay countries.

Certain special questions for the National Board of Industrial Injuries may result in an extremely long case consideration period, and often principled questions will be returned after a while with diplomatic, irrelevant answers.

Previously, the National Board of Industrial Injuries used to send questionnaires about income-related issues to foreigners which contained a number of questions that referred to Danish law (early retirement pension, flex jobs, rehabilitation, etc.). This has stopped now following criticism from CO-SEA.

CO-SEA has asked to have the webpage section "make your own calculation" translated and included on the English webpage of the National Board of Industrial Injuries.

Section 15 of the act on industrial injuries stipulates the following:

"*Subsection 3. Compensation of future expenses for recovery, exercise rehabilitation and aids necessary because of the industrial injury shall be set as a lump sum. In case of permanent expenses, the amount constitutes the expected, average annual expenses multiplied by the capitalisation factor stipulated pursuant to section 27(4) for loss of earning capacity."*

CO-SEA has never seen this provision used in practice in connection with foreign industrial accident cases, and in our view it could often be used. In 2016, we will focus on the issue of treatment expenses in general. In this connection, it is our view that more attention should be attached to treatment expenses for persons domiciled in, for example, the Philippines or India, especially considering the difference between these expenses and the free Danish treatment.

(See also later under the Danish Shipowners' Accident Insurance Association).

The Danish Maritime Authority

Our cooperation with the Danish Maritime Authority is, and always has been, unproblematic and we have a designated person whom we can contact about cases involving sickness benefits. On the other hand, the co-operation between the Danish Shipowners' Accident Insurance Association and the Danish Maritime Authority is non-existing, and the Danish Shipowners' Accident Insurance Association cannot, for example, acquire information from the Danish Maritime Authority about civil registration numbers, tax conditions and the like once a case has been considered by the Danish Maritime Authority due to the act on protection of personal data and lacking proxies.

Only in a few debatable cases, have we had discussions with the Danish Maritime Authority about the right to receive sickness benefits, where the Danish Maritime Authority in general relies very much on the written text. Here are a few examples:

4 January 2012	ska ph
20 December 2013	ASK EET 40 per cent
23 March 2015	ASK EET 90 per cent

(CO-SEA claim close to 100 per cent)

The case has been reconsidered upon the request of CO-SEA following a visit to the injured person in Manila. Apparently, the person concerned has – in addition to an objectively established injury of his visual nerve – contracted serious brain injury. In the accident, he fell in rough weather in the galley and hit his head against the kitchen range first and subsequently he hit the floor with the back of his head (claim revised to loss of earning capacity = 100 per cent).

In the case concerned, the injured person signed a declaration for the manning agent approx. 2 months after the accident in which he declared that he was fully fit for work. The declaration was forwarded to the Danish Maritime Authority, which immediately closed the sickness benefits case, which should in principle have been continued for almost 22 months (until a decision on loss of earning capacity had been made by the National Board of Industrial Injuries). CO-SEA has no doubt whatsoever that the person concerned did not know what he signed and already the first decision on loss of earning capacity by the National Board of Industrial Injuries supports the view that he can hardly have been fit for duty two months after the accident. We did not succeed in making the Danish Maritime Authority reconsider the issue of the right to receive sickness benefits.

160872-AAA1 (ASK case no.)
96/2008 (UFDS case no.)
26 February 2008 ska ph
25 November 2011 ASK disability 18 per cent

After the accident on 26 February 2008, the person concerned is declared "fit for duty" with back pains by a medical practitioner in England.
He signs off after having completed the job in April 2008.
He signs on a new ship on 18 May 2008 and signs off on 11 December 2008 again after having completed the job.
He signs on again on 9 April 2009, and on 12 April 2009 work-related back pains are reported.
After having consulted a medical practitioner in Cape Town on 10 May 2009, he signed off due to sickness in order to receive treatment.
On 29 August 2009, he signed on a new ship and signed off on 19 March 2010.
On 26 April 2010, he signed on a new ship.
On 20 June 2010, he signed off after a "medical report" in Klaipeda.

On 11 February 2011, the Danish Maritime Authority writes in a letter to CO-SEA that the Danish Maritime Authority does not consider it established that the signing off on 20 June 2010 was due to an industrial injury, which means that the requirement for 13 weeks of employment stipulated in the order on sickness benefits need not be met. Then, the Danish Maritime Authority lists the ordinary jobs at sea after the accident on 26 February 2008 and the right to receive sickness benefits is rejected.

While forwarding various documentation of the seafarer having been reported sick as a consequence of the industrial injury, CO-SEA reiterates its request for sickness benefits.

On 23 December 2011, the Danish Maritime Authority maintains its rejection, and on 20 January 2012 CO-SEA appeals the decision to the Council of Appeal on Health and Safety at Work.

On 8 February 2013, the Council of Appeal on Health and Safety at Work makes its decision and changes the decision made by the Danish Maritime Authority. The person concerned is entitled to receive sickness benefits from 20 June 2010 because it is considered to have been documented that he was reported sick due to a deterioration of his condition after the industrial injury.

Another issue that may in principle be delicate is whether the fact that a person is reported fit for duty applies to work at sea or work at large. To the Danish Maritime Authority, it is according to the act necessary that the

report on sickness applies to "any kind of work", but these declarations are not always formulated unambiguously in the Philippines.

In connection with medical reports and payment of sickness benefits, the Danish Maritime Authority cooperates with the Danish Embassy in Manila (previously the Consulate). It has been practice for the Embassy to acquire medical reports and to cooperate with the relevant manning agencies in Manila. In connection with the "Leopard" cases, CO-SEA specifically opposed this practice, and the Embassy excused its procedure and changed its instructions for the seafarers. It is somewhat uncertain which general practice applies at the moment, but presumably the seafarer can normally choose which medical practitioner to use.

Sickness benefits are paid by means of the Embassy for a period of two months, and hereafter a new medical report will normally have to be acquired before the next payment can be made (in certain cases, the Danish Maritime Authority does not require a medical report for a longer period of time).

SICKNESS PAY AND SICKNESS BENEFITS

* *The employment requirement* must be met in order to be entitled to receive sickness **benefits** (various provisions of the act on sickness benefits and the act on sickness benefits for seafarers).
* *The employer period:* 30 calendar days (sections 6 and 30 of the act on sickness benefits).
* *The right to receive sickness benefits ceases:*
  After 26 weeks (182 calendar days) (section 25 of the act on sickness benefits).
  After 18 weeks (126 calendar days) (section 17 of the act on sickness benefits for seafarers).
  Section 27 of the act on sickness benefits contains more reasons for extending the period, including awaiting a decision on loss of earning capacity after an industrial injury.
* *The seamen's act:* **Sickness pay** runs for 16 weeks (112 days) or until the termination of the employment after expiry of the 16 weeks (section 29 of the seamen's act).
* *Foreign collective agreements*: Entitled to a maximum of 120 days' sickness pay = "**basic pay**".

For a number of years, we have been facing a rather obscure problem related to the size of the sickness benefits. In accordance with the collective agreement, *sickness pay* is being paid as a "basic pay", i.e. wages without any addition of for example the permanent large addition for "guaranteed overtime". The sickness pay is paid for a period of up to 120 days by the shipowner (according to collective agreements) with the right to be refunded by the Danish Maritime Authority after the employer period, whereafter the case is transferred to the Danish Maritime Authority if the person concerned is still unfit for work.

When a seafarer is domiciled in an EU country, the sickness benefits are not paid by the Danish Maritime Authority after 126 days (if the person concerned is still entitled to receive benefits following an industrial accident), but by the municipality in which the relevant shipowner is domiciled. In these cases, the applicable legal basis is the general act on sickness benefits, according to which sickness benefits are calculated on the basis of the average income, however, with a maximum amount.

In an especially comprehensive case with a Polish citizen who had been involved in an industrial accident on 15 November 2007, we and the former seafarer complained to the Municipality of Copenhagen about the basis for calculating the sickness benefits on several occasions. The administration forwarded the complaint to the Employment Appeals Board on 5 March 2010, stating that the Municipality continued the calculation basis as it had been informed by the Danish Maritime Authority "*on the basis of the monthly basic pay"*.

The Employment Appeals Board sent the case back to the municipality by its decision of 26 May 2010, and on 30 June 2010 the municipality informed that they will observe the assessment of the Appeals Board that the municipality must base its calculation on the provisions of section 47 of the act on sickness benefits, according to which the calculation is based on the actual gross income (including overtime) acquired in average by the wage earner in the three months immediately prior to him being reported sick. Subsequently, the municipality calculated that an amount of DKK 46,227 after tax should be paid to the person concerned as a corrective payment.

The Danish Maritime Authority has consistently rejected that the same legal basis applies to its calculation of sickness benefits, apparently referring to section 11 of the order on sickness benefits for seafarers together with section 29 of the seamen's act (act on seafarers' conditions of employment, etc.), cf. L100 (remarks to the act as presented on 13 January 2010 – Danish Parliament 2009-10).

When the Danish Maritime Authority forwards a case on sickness benefits to a shipowner municipality, the calculation basis used by the Danish Maritime Authority is transferred at the same time, and this gives – or may give – rise to wrong payments. Furthermore, it is the view of CO-SEA that the practice used by the Danish Maritime Authority is wrong and cannot be derived from the legal basis referred to, but the case has not yet been tried before the Council of Appeal on Health and Safety at Work, and the issue involves several complicated problems (such as the issue of the maximum sickness benefits rate according to section 47 of the act on sickness benefits – where the municipality in the case concerned takes its point of departure in the maximum unemployment benefits rate that presupposes membership of an unemployment fund).

In any case, it is considered logically wrong to calculate the sickness benefits rate in two different ways depending on whether the one making the calculation is the municipality or the Danish Maritime Authority.

Example for illustration purposes:

* Maximum benefits per month in 2016: **17,974** (836 x 5 x 4.3)
* Basic pay per month for an able seaman on an AMOSUP collective agreement:
  USD 608 = DKK **4,185** (wages as of December 2015)
* Total pay per month for an able seaman on an AMOSUP collective agreement:
  USD 1,365 = DKK **9,396** (wages as of December 2015)

Danish Shipowners' Accident Insurance Association

If we take a look at the entire period 2006-2015, our cooperation with the insurance company has been excellent. Unfortunately, we noted that the development in the set-off dispute in 2015 had a very bad impact on the relationship between CO-SEA and the Danish Shipowners' Accident Insurance Association.

In principle, we largely appreciate that the Danish Shipowners' Accident Insurance Association is trying to receive justice in the same manner as we do on behalf of the seafarers. We also understand that the corrective payments made following the Danish Eastern High Court judgment have been considerable for the company. However, this does not alter our perception of an unbecoming process during 2015.

If there was a perception that payments through Danish industrial accident insurances could be set off against insurance amounts already paid by P&I companies in the Philippines, the companies could – from the point in time when this perception applied – in connection with and simultaneously with the payments by the Philip-

pine Overseas Employment Administration have presented their possible claims to the injured person and the National Board of Industrial Injuries/Danish Shipowners' Accident Insurance Association.

As has been the procedure in now ten cases, the National Board of Industrial Injuries has written to the persons concerned that decisions have been made and that specifically calculated payments are on their way from the insurance company whereafter the Danish Shipowners' Accident Insurance Association has informed after some time that these payments have been suspended for an indefinite period of time. Though decisions by the National Board of Industrial Injuries do state a deadline for appeals by both parties, nobody had imagined that payments which constitute a long awaited consequence of a Danish Eastern High Court judgment would be reset on the basis of an old payment under Philippine Overseas Employment Administration law. The injured persons have had every good reason to presume and expect that the payments would be made as notified by the National Board of Industrial Injuries.

The entire story has been a major strain, presumably also to the Danish Shipowners' Accident Insurance Association as such, in terms of "book-keeping" and correspondence. We possess comprehensive files of correspondence with all ten involved parties.

The Danish Shipowners' Accident Insurance Association has announced that they intend to pay interest on overdue payments in all the cases if their contention is not upheld as regards the set-off claim.

In late 2015 and especially after a meeting in Rødovre on 5 November, the relationship between the Danish Shipowners' Accident Insurance Association and CO-SEA has fortunately been normalised. We have a normal, sound cooperation on an everyday basis and are awaiting a final decision about the set-off issue in silence.

LIMITATION – PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION CLAIMS

It has not been possible to reach agreement about a claim made by CO-SEA for a 3-year limitation pursuant to the general Danish provisions on limitation (in two of the cases, the payments by the Philippine Overseas Employment Administration have been made more than three years prior to the set-off claim). In one of these cases, this has been a special strain because the person concerned has lost everything after the well-known typhoon "Haiyan" in 2013. Just before Christmas in 2015, we did however find a kind of temporary and partial solution to this problem together with the Danish Shipowners' Accident Insurance Association, in the form of an advance payment of the ongoing payment to the person concerned.

The limitation claim has also been brought before the National Board of Industrial Injuries (Special Adviser in the section for Policy, Law and Analysis), but our views have in principle merely been forwarded to the lawyer of the Danish Shipowners' Accident Insurance Association who reverted with a "we are back at the point where we started" answer, saying: "*In order to take a decision on the allegation made by CO-SEA on the issue of limitation, it is necessary that the UFDS is informed about the regulations, etc. upon which CO-SEA bases its allegation."* (22 July 2015)

For procedural reasons, we have – somewhat reluctantly – decided to let the issue remain unsolved while we are awaiting an overall decision by the Council of Appeal on Health and Safety at Work.

MEETING BETWEEN THE NATIONAL BOARD OF INDUSTRIAL INJURIES, THE DANISH SHIPOWNERS' ACCIDENT INSURANCE ASSOCIATION AND CO-SEA

On 30 January 2015, we held a joint meeting at the premises of the National Board of Industrial Injuries with the following agenda:

* Update of agreement between the National Board of Industrial Injuries and the Danish Shipowners' Accident Insurance Association about the acquisition of medical reports from medical specialists.
* Adjustment of questionnaires forwarded to foreigners.
* Contract between the National Board of Industrial Injuries and the Danish Shipowners' Accident Insurance Association.
* Choice of medical consultants.
* General information for foreign seafarers.
* Loss of earning capacity after the Danish Eastern High Court judgment.
* The Leopard cases.
* Specific case (brain-injured cook).

The National Board of Industrial Injuries made a summary from the meeting.

AGREEMENT ON COOPERATION BETWEEN THE NATIONAL BOARD OF INDUSTRIAL INJURIES AND THE DANISH SHIPOWNERS' ACCIDENT INSURANCE ASSOCIATION

The Danish Shipowners' Accident Insurance Association considers all cases reported preliminarily before they are forwarded to the National Board of Industrial Injuries for further consideration, if relevant. When the Danish Shipowners' Accident Insurance Association finds that a report will not result in compensation, the case is deposited with the Danish Shipowners' Accident Insurance Association at the same time as a letter about the decision is forwarded to the person injured in which he or she is requested to write back in case of disagreement. The case consideration – as well as the provisions on deadlines under the law – is not initiated until a case is forwarded to the National Board of Industrial Injuries. When the National Board of Industrial Injuries acquires medical reports from abroad, this is done through the Danish Shipowners' Accident Insurance Association.

The background for this special system between the Danish Shipowners' Accident Insurance Association and the National Board of Industrial Injuries is historical. Until 18 October 1993, there was a general arrangement according to which the insurance companies performed part of the handling of the case consideration. These procedures were changed through a circular letter dated 8 October 1993 and entitled "Guidance on the acquisition of information from a medical practitioner in company cases". The Danish Shipowners' Accident Insurance Association was kept outside the new arrangement.

By letter of 4 October 2010, the former General Director of the Danish Shipowners' Accident Insurance Association Mogens Gregersen complained to the National Board of Industrial Injuries because "*the employees of the Board are now again acquiring functional reports/medical reports, including reports from medical specialists, in cases about injured seafarers in contravention of the agreement that the Danish Shipowners' Accident Insurance Association concluded in 2003 with ...*".

A written agreement as such does possibly not exist, but it is clear from various correspondence that the agreement was concluded because correspondence with foreign seafarers requires special insight about places of residence, etc.

At the meeting held at the premises of the Board on 30 January 2015, the system was discussed and it is clear from the summary that: "*CO-SEA accepted a continuation of the existing arrangement. However, this acceptance is conditional upon a description of the process related to the acquisition of medical information, including openness about medical registers."*

On several occasions, CO-SEA tried to remind the Danish Shipowners' Accident Insurance Association of the description agreed upon, but in letter to the National Board of Industrial Injuries of 2 July 2015, CO-SEA had to say that attempts to make the Danish Shipowners' Accident Insurance Association react had not been successful. Subsequently, we informed "*that CO-SEA consequently withdraws its acceptance of the existing arrangement."*

The above has had no consequences, and the situation remains unchanged at the time of writing.

MEETING BETWEEN THE DANISH SHIPOWNERS' ACCIDENT INSURANCE ASSOCIATION AND CO-SEA

On 10 April 2015, we held a working meeting in Amaliegade about a number of practical issues. After the meeting, the undersigned forwarded his draft summary of the meeting. Subsequent attempts to have the summary accepted or to receive remarks to the summary from the Danish Shipowners' Accident Insurance Association were not successful.

The delicate issue in the summary was undoubtedly about set-offs, where the summary listed various scenarios for the way forward. If the contention of the Danish Shipowners' Accident Insurance Association was not upheld by the decision from the National Board of Industrial Injuries, the decision would be appealed, and the Danish Shipowners' Accident Insurance Association would pay amounts that had already been retained against the injured person's signature that, in the future, set-offs could be effected (against ongoing benefits) if the contention of the Danish Shipowners' Accident Insurance Association was finally upheld.

CO-SEA considered the lack of acceptance, or the lack of a reasoned objection, a breach of confidence.

RIGHT OF INFORMATION

In general, we are always granted a right of access to information in personal cases from the Danish Shipowners' Accident Insurance Association when we are in possession of a proxy.

In two specific cases and in connection with the set-off cases, it has however not been possible to get right of access to information from the Danish Shipowners' Accident Insurance Association.

In connection with the set-off cases, both we and our lawyer have tried to get documentation for a specific set-off claim without success (the claims are merely found as allegations in an accompanying letter to the injured persons).

On 14 October 2015, CO-SEA complained to the National Board of Industrial Injuries, describing the background for the request to get access to documents in the two specific cases where the Danish Shipowners' Accident Insurance Association must be presumed to exert powers on behalf of the Board, but we were

merely informed that the Danish Shipowners' Accident Insurance Association is not a public authority and were, thus, referred to the lawyer of the insurance company.

When we have reminded the National Board of Industrial Injuries about the lacking answer to this complaint, we have merely been informed that the National Board of Industrial Injuries awaits an answer from the Danish Shipowners' Accident Insurance Association.

In the first specific case, where the National Board of Industrial Injuries repeatedly asks the Danish Shipowners' Accident Insurance Association to procure a medical record from Manila, the correspondence ends without any result again and again because the request is apparently forwarded to the injured person, who cannot make the hospital print a record (a medical practitioner writes a few lines by hand, which are considered useless by the National Board of Industrial Injuries). In an email to the Danish Shipowners' Accident Insurance Association, CO-SEA remarks that the Danish Shipowners' Accident Insurance Association has been requested to contact the hospital directly, to which the Danish Shipowners' Accident Insurance Association answers: "We have already contacted the hospital twice ages ago, but have not received anything."

Against the background above, we request to be granted right of access to the correspondence with the hospital – unsuccessfully.

I have met the injured person several times in Manila, and he must presumably have one of his legs amputated.

In the other specific case, the Danish Shipowners' Accident Insurance Association claims that 14 documents have been forwarded to the National Board of Industrial Injuries in February 2015 and obviously must have gone lost, whereafter they are forwarded again on 9 July 2015. The case concerned is infected by a prolonged process where the son of a deceased seafarer requests to have payment of child support extended due to studies. Due to the process, the person concerned is about to miss the chance of completing his studies (see more below).

CO-SEA has requested to be granted access to the Danish Shipowners' Accident Insurance Association's alleged correspondence with the National Board of Industrial Injuries in February 2015, when the documents were forwarded from Manila – but without any luck.

DECEASED PERSON'S FAMILY

This case is extremely comprehensive when it comes to correspondence. An adult well-educated daughter of the deceased person is writing on behalf of the family.

The second officer dies after an accident with a lifeboat on 28 January 1997 in Colombia.
110760-AAA1 (ASK case no.)
96/97 (UFDS case no.)

The second officer was married and has three children.

110760 (wife's birth data)
190491 (oldest daughter)

070694 (son)
030297 (youngest son)

All three children are granted ordinary benefits until they turn 18 years of age and subsequently additional benefits due to documented studies until they turn 21 years of age. Problems arise in connection with the additional child support. The extended benefits correspond to approx. DKK 2,000 per child per month.

On 14 August 2014, the Danish Shipowners' Accident Insurance Association writes and informs the mother that, unfortunately, the company has paid DKK 78,648 too much during the period 2012-2014 because the payments for the oldest daughter were not stopped in due time when she turned 21 years of age. The Danish Shipowners' Accident Insurance Association regrets the erroneous payments, but is also puzzled why the family has not reacted to the payments which have clearly been erroneous.

The Danish Shipowners' Accident Insurance Association asks for proposals for repayment and – lacking such acceptable proposals – the company proposes to withhold half of the benefits from the payments made to the two other children every month until the debt has been paid.

Until this point in time, all payments have been summed up to one amount, which has been inserted on the mother's account, and CO-SEA points to the fact that it has been an error in itself that the benefits for the two children above the age of 18 have not been inserted on their own accounts.

From this point onwards, everything that can go wrong, goes wrong. The correspondence between Manila, Amaliegade and Rødovre is extensive and worthy of a novel.

The Danish Shipowners' Accident Insurance Association withholds benefits for rather long periods of time, but admits to CO-SEA at one point in time that this would hardly be accepted by a court since the family maintains that it has received all the amounts in good faith. Assurances are made to pay all the amounts withheld, but this does not happen after all. All questions to and fro are prolonged for months, and often the oldest daughter (who is writing on behalf of the entire family) does not receive any reply to her letters that are sent again and again.

On 3 February 2015, the oldest son turned 18, and in February all the documentation needed to apply for extended benefits were forwarded. The Danish Shipowners' Accident Insurance Association states that all the papers were forwarded simultaneously to the National Board of Industrial Injuries, where it turns out in July that they have not been recorded. The Danish Shipowners' Accident Insurance Association forwards the documentation again on 9 July 2015.

Also the case consideration by the National Board of Industrial Injuries is peculiarly slow and a decision is not made until 12 October.

CO-SEA does not get a proxy until very late in this case because we are of the view that it is a mere matter of expedition where we are just offering the family advice during the process after we have gotten in contact with them (upon the death in 1997). The undersigned meets the oldest daughter in Manila in June 2015.

The Danish Shipowners' Accident Insurance Association clearly dislikes the family which the company finds is, without any doubt, in bad faith when receiving benefits for the oldest daughter after she has turned 21.

To CO-SEA, the daughter seems to be decent and reliable, but it is simply impossible to decide whether they were in good faith or in bad faith. The fault is indisputably that of the company, and just the fact that the benefits have not been split up makes the claim for repayment legally weak.

Overall, the family is worse off economically after 1997, and the children have done their utmost to make themselves a tolerable life in the Philippines.

INTEREST ON OVERDUE PAYMENTS

In two more complex cases, the calculation principles used in connection with interest on overdue payments have been more uncertain. The Danish Shipowners' Accident Insurance Association is not to be blamed for this, and apparently everyone, including the National Board of Industrial Injuries, is in doubt.

One of the examples can be illustrated by means of the following:

30 August 2011	ASK EET 40 per cent
13 September 2011	UFDS appeal
5 April 2013	ASK EET 15 per cent
24 July 2013	ASK EET 15 per cent (amount paid)
10 June 2015	ASK EET 85 per cent (following the Danish Eastern High Court judgment)
11 August 2015	ASK EET 85 per cent (amount paid)

On 30 September 2015, we asked the National Board of Industrial Injuries how to calculate the interest on overdue payments in the right way in this case, and the request was forwarded to the division for calculations. Here, it has been ever since and apparently the National Board of Industrial Injuries is also in doubt.

The Danish Shipowners' Accident Insurance Association and CO-SEA have agreed to await an answer from the National Board of Industrial Injuries before making a specific calculation in the two cases.

CONCLUDING REMARKS

As is probably evident, the cooperation has been extremely chilly in 2015. However, the situation has fortunately been normalised, cf. the introduction, after our meeting on 5 November.

We hope that all cases related to set-offs will be solved in 2016 and that the remaining unsolved cases will subsequently be closed in a constructive manner.

It is no secret that, for quite some time, we have considered filing a complaint with the Ombudsman (or the Danish FSA – see below), considering the half-hearted attitude of the National Board of Industrial Injuries and its evasive answers to complaints, especially as regards requests for being granted right of access to information. Considering the considerably more positive attitude around the turn of the year 2015-16, we will however await future actions this year.

When the National Board of Industrial Injuries generally rejects interfering, it is done with reference to an amendment to an act according to which the National Board of Industrial Injuries no longer has any powers in

relation to the case consideration of insurance companies. In the future, complaints are to be considered by the Danish FSA.

The Council of Appeal on Health and Safety at Work

We have not had a cooperation as such with the National Board of Industrial Injuries.

When decisions are appealed, this is done in cooperation with the injured person. We inform about the decision made by the National Board of Industrial Injuries and inform the injured person about our position. When we recommend filing an appeal, we also offer to write the appeal – in Danish though. When we do not consider it advisable to file an appeal, we inform the injured person about this, while stating that he or she is free to appeal against the decision, but that this would also involve a procedural risk (the compensation from the National Board of Industrial Injuries could be lowered).

If the Danish Shipowners' Accident Insurance Association files an appeal, it normally results in a suspension of the decision made by the National Board of Industrial Injuries.

We have on several previous occasions complained about the fact that the Council of Appeal on Health and Safety at Work does not translate its decisions into English. In an answer dated 6 September 2012, the Council of Appeal on Health and Safety at Work rejected this possibility, but following repeated written complaints, we succeeded in making the Council of Appeal on Health and Safety at Work change its practice. But, subsequently they took us by surprise. Previously, we could continue using the proxy that we had in the National Board of Industrial Injuries, which did not mean that all correspondence in the case was exclusively directed to the holder of the proxy. With a new proxy that applies only to the Council of Appeal on Health and Safety at Work, this possibility has been discontinued. However, this is not such a major problem. In addition to standard messages about the inability to keep deadlines, only the decision as such is of relevance to the injured person and it is essentially quite simple to translate this for the conclusion.

On 24 June 2013, CO-SEA complained about various issues related to the case consideration by the Council of Appeal on Health and Safety at Work (translation into English, cases that were lost and prolonged case consideration). We never received a reply as such, but the letter resulted in some email correspondence and one single meeting with a director.

Though the Council of Appeal on Health and Safety at Work has a system of priority, it is not in our experience easy to make the Council of Appeal on Health and Safety at Work consider a case in haste. We have seen examples where decisions have been prolonged for six or twelve months after we have been told over the phone that "something will happen soon and the responsible person has been informed".

Now, we are trying once again with the case on set-offs (see above under the section on set-offs).

We would have liked to include in this report an overview of cases considered by the Council of Appeal on Health and Safety at Work in which CO-SEA has been involved (appeals are centred around: degree of disability, loss of earning capacity and accounts of annual wages). Who filed an appeal, and whose contention was upheld after how long a period of case consideration? However, we have not kept an independent record of these cases, unfortunately, and it would be a very comprehensive task to reconstruct retrospectively.

We will try to find time for such a reconstruction in the course of 2016, and it is our intention to draw up a log as such on all decisions (National Board of Industrial Injuries + Council of Appeal on Health and Safety at Work).

The Ombudsman – languages

On 17 December 2013, CO-SEA wrote a specific complaint to the Mayor of the Social Services Administration in the Municipality of Copenhagen about a letter about benefits to a Portuguese citizen domiciled in Portugal who had never been in Denmark and who did not speak Danish.

The letter was in Danish with contents specifically directed at a Danish citizen domiciled in Denmark and with knowledge about a "digital letter box" and an ability to turn up for a meeting at a Danish job centre for an interview.

Towards the end of the letter, we specifically state that the Portuguese citizen can disregard the letter forwarded.

The answer is forwarded on 10 January 2014, and it goes as follows:
"*We can inform you in this connection that these letters are generated automatically via NemRefunding on the basis of the employer's reporting. According to the law, these letters are forwarded by the so-called SDPI solution, and their wording has been decided nation-wide by Local Government Denmark and the Benefits Service in Copenhagen does not have any influence on the drafting of these letters, just as we cannot right away propose a technical solution that could handle automatic forwarding of these letters in several different languages."*

Subsequently, the Benefits Service in Copenhagen informs that they do not have any knowledge whatsoever about the citizen concerned having a sickness benefits case since the case has not been received by the Municipality and furthermore:

"On the basis of the information forwarded, we can establish that the employer has correctly reported absence from work due to sickness via NemRefunding, which has accepted the report, and the system has – via the SDPI solution – forwarded the letter of information to the person who was reported sick so that it is possible to complain if the information reported by the employer is not considered correct."

"Furthermore, we have found that the report has been stopped in KMD Benefits since KMD Benefits has not been able to validate the case. Therefore, a message has been sent via the system to the employer who reported the case with the erroneous text: The case has been rejected by the municipality due to lacking validation."

"The Benefits Service has generally objected to this erroneous text because it is the system that rejects via KMD Benefits and not the municipality."

"Unfortunately, it takes time to consider and, if relevant, make changes to a nation-wide system in accordance with proposals for changes."

"On the basis of the information forwarded, the Benefits Service has contacted the employer, AP Møller-Mærsk, and been informed that they have abandoned their attempts to get the reports through and, therefore, has not done anything more in this case as regards reports to the municipality."

Finally, the Benefits Service informs that they have a percentage of answers by telephone of 95 per cent and that they are constantly striving to improve their service, both in terms of quantity and quality. The Portuguese citizen can disregard the letter *if he does not have any objections to the contents.*

And finally, there is a recommendation to contact the Benefits Service in the few individual cases related to seamen not resident in Denmark so that these cases can be dealt with manually.

On 21 January 2014, we forwarded this correspondence to the Ombudsman of the Danish Parliament as "*Complaint about the case consideration of the Municipality of Copenhagen as regards foreign citizens, especially seafarers without any relation to Denmark."*

We drew attention to the fact that the information letter from the Benefits Service contains a statement that "*if an information form is not returned and if the person concerned does not contribute to otherwise clarifying the case, it may result in discontinuation of the right to receive sickness benefits."*

It is our view that the letter is in contravention of section 19 of the public administration act because "*it is undeniably difficult to claim that the parties are adequately consulted in the specific case."*

We present proposals for an alternative procedure and recommend changes right away.

On 3 March 2014, we receive a reply from the Ombudsman who decides not to initiate an investigation. The Ombudsman finds that the municipality is striving to find a solution in connection with the reporting of seamen not resident in Denmark (which we have unfortunately not been able to see). Finally, attention is drawn to the fact that the field of sickness benefits is within the jurisdiction of the Ministry of Employment, which it is possible to contact if a solution to the problem about the reporting of seamen not domiciled in Denmark is delayed.

It is quite easy to ascertain that this story ended in its own stationary circle.

Ministry of Business and Growth – digitisation and languages

On 30 November 2014, CO-SEA wrote the Minister for Employment (we received a reply from the Minister for Business and Growth) about ongoing problems for foreign seafarers who were in contact with the Danish authorities in connection with voyages on DIS ships. We stressed that only a few of the seafarers concerned could be expected to have access to assistance from Denmark and that the Danish authorities were, to a large extent, communicating with foreign citizens in Danish.

The point of departure of the letter was the provision that it should only in exceptional cases be possible to communicate with the authorities without been connected to Digital Mail from 1 November 2014 and that foreign seafarers would only in exceptional cases be furnished with a generated CPR number.

On 9 December 2014, we received a reply from the Minister for Business and Growth (Mr. Henrik Sass Larsen) who stressed that:

"It is important that seafarers working on board Danish ships have proper conditions and there should not be any unnecessary barriers to their communication with the public authorities. This is so irrespective of whether the seafarers concerned are Danish or foreign."

"I have asked the Danish Maritime Authority to take the initiative for a meeting with the relevant authorities and organisations in order to clarify the problems and consider possible solutions."

To our knowledge, no solutions as such have been found as a result of this.

The Danish tax authorities (SKAT)

(See also the section "Portuguese seafarer").

It is hardly a surprise to anyone that our relationship with the Danish tax authorities is difficult and tense. Most Danes are acquainted with endless telephone queues and switching through that continues until you hang up. When you finally get in personal contact with somebody and get a direct number in the system, it is only for a short period of time until the next system reconstruction.

One hardly has the heart to bother the administration with difficult marginal tasks when one is reminded on a daily basis that the entire system is about to collapse.

Actually, we should not have any business with the Danish tax authorities, we thought, until 2015 when it turned out that the Danish Shipowners' Accident Insurance Association withheld 55 per cent tax from many payments because income accounts and civil registration numbers had not been forwarded and, consequently, tax deduction cards had not been issued. We have been informed that if you do not have a tax deduction card, a payer of a taxable income is obliged to withhold 55 per cent tax.

However, at the time of writing, the Danish Shipowners' Accident Insurance Association seems to be getting some systems in place so as to avoid these unreasonable deductions. You cannot just inform a Filipino – as you can a Dane – that the tax will be equalized next year when overpaid tax will automatically be inserted on a NemAccount. A Filipino would not be able to understand why 55 per cent tax – or even 37 per cent tax – must be deducted from a monthly benefit of, for example, DKK 1,500.

We have had an overall discussion with the Danish Shipowners' Accident Insurance Association about who is responsible. We agree that it would be unreasonable to require the foreign ex-seafarer to get acquainted with the Danish tax system and communicate his or her income data to the Danish tax authorities by means of NemID and NemAccount.

The Danish Maritime Authority does not have problems similar to those of the Danish Shipowners' Accident Insurance Association, and apparently they have smoother access to the acquisition of civil registration numbers and preliminary assessments of income. They do not have problems with retroactive payments for longer periods of time, just as the Danish Shipowners' Accident Insurance Association has in connection with a number of decisions that require an amount to be distributed over several income years. The Danish Ship-

owners' Accident Insurance Association cannot acquire civil registration numbers from the Danish Maritime Authority because the Danish Shipowners' Accident Insurance Association is a private company that does not have any proxies on behalf of the wage earners.

WHAT IS TAXABLE?

Sickness benefits from the Danish Maritime Authority and municipalities.
Ongoing loss of earning capacity payments.

Compensation for invalidity as well as capitalised compensations for loss of earning capacity (max. 50 per cent) are **not** taxable.

BASIC ALLOWANCE

In 2016, the personal allowance for a foreigner is DKK 44,000 per year, which means that all monthly payments below DKK 3,666 should result in a card specifying the amount of income allowed without tax ("*frikort"*). All foreigners whom we have known choose to have 50 per cent of the loss of earning capacity capitalised and, thus, tax is (normally) payable in Denmark only in connection with sickness benefits and for interim periods.

LANGUAGES

The Danish tax authorities communicate only in Danish (however, with a few exceptions from 2015). Tax assessment notices, which many Danes do not understand much of in Danish, are also sent to the Philippines accompanied by a letter with the technical information on NemID and the like.

Quite frequently, CO-SEA receives such tax letters from foreigners as scanned files, in connection with which we can assist with information about the principal contents and, if relevant, with establishing a NemAccount. Often, we can tell them that the letter should be thrown out.

ADVANCE TAX ASSESSMENTS AND CIVIL REGISTRATION NUMBER

Now, the Danish tax authorities have published an online form consisting of six pages (2.5 pages with questions) which is available in six languages:
skat.dk/blanketter – 04 and subsequently 04.063
It is possible to fill in the form online and then print it.

This system can presumably solve quite a few problems.

DOUBLE TAXATION AGREEMENTS

According to a double taxation agreement that has been concluded between, for example, Denmark and the Philippines, it should in principle be possible for a Filipino to be exempt from paying taxes in Denmark.

On 18 January 2007, the Danish tax authorities stated that it was possible for this group of persons to be exempted from paying tax in Denmark if it could be proven that the persons concerned were fully liable to pay

tax in the Philippines and one Filipino who was entitled to receive compensation was exempted from paying tax. Later, the Danish tax authorities revised their decision and, on 7 January 2009, they informed the Danish Shipowners' Accident Insurance Association that the exemption was withdrawn as of 1 January 2010. The Danish Shipowners' Accident Insurance Association brought the case before the Tax Appeals Tribunal, which informs on 19 September 2010 that tax exemption cannot be granted.

Now and again, CO-SEA is being involved in cases on national tax authorities requiring local tax on DIS incomes that they will not accept as incomes on which tax has been paid to Denmark because such a tax cannot be documented from Denmark.

Danish Labour Market Supplementary Pension (ATP)

In general, we hold the view that ATP contributions should be paid for all foreign seafarers. However, to our knowledge this is only the case for EU seafarers (to some extent).

In a case related to a Spanish seafarer, we have salary statements covering 27 calendar years (the period from 1970 to 1997) and various Danish shipowners. There are a total of 207 salary statements, and out of these ATP is deducted on 131, which indicates a large degree of randomness.

On 18 December 2013, we wrote a letter to the ATP requesting how the ATP schemes for DIS seafarers domiciled abroad were generally administered. Our request was based especially on the approx. 3,000 Filipinos who are permanently serving on Danish ships and the fact that the "Agreement on social security between the Kingdom of Denmark and the Republic of the Philippines" could be expected to be signed. The questions asked were the following:

* *Will it be ensured that the communication with the Philippines is in English?*
* *How will the Filipinos concerned be informed about their outstanding amounts and the possibilities of receiving them once they reach the pension age?*
* *How will they be informed about their rights in connection with deaths?*
* *If the amounts paid do not result in payments, how are the concerned accounts treated?*

On 7 March 2014, we received a reply from the Danish Labour Market Supplementary Pension to the first three questions – the fourth one was ignored.

* *In general, the Danish Labour Market Supplementary Pension writes Danish letters – but when we receive letters from persons in English, we will also in general answer in English.*
* *Three months before a person becomes a retirement pensioner (depending on the year of birth), the Danish Labour Market Supplementary Pension will forward a letter informing about the life-long pension that this person is entitled to receive. This is conditional upon the Danish Labour Market Supplementary Pension having this person's address. We get our address data from the Danish central national register (CPR) so this is where the address must be updated. In this connection, we refer to section 9(4) of the ATP act, which states:*
  "Supplementary pension, cf. subsection 1, for members domiciled abroad is paid upon request."
* *The Danish Labour Market Supplementary Pension is not automatically informed about deaths abroad. Therefore, it is important that any relatives always contact the Danish Labour Market Supplementary Pension. The Danish Labour Market Supplementary Pension can pay lump sums to surviving spouses, cohabitors or children younger than 18/21 years of age.*

Considering foreign DIS seafarers' general lack of knowledge about Danish society, these answers do not leave us with much confidence that these accounts are realised in accordance with the intent. And who will write to Denmark and the Danish Labour Market Supplementary Pension on his own account following a death?

Payment Denmark – child support for EU citizens

On 19 May 2014, CO-SEA wrote to Payment Denmark/Family Allowances requesting about the legal position of EU citizens engaged on DIS ships as regards child benefits checks.

The questions were circulated among various public authorities for clarification purposes, and on 23 September 2014 we received a reply from International Pension and Social Security.

Initially, it is clarified that seafarers are not considered to be domiciled on board the ship. The ship is considered a *temporary residence, "and the domicile will be the place where the person 'normally' resides, has his or her family affiliation, etc. ... also during the six months' of work on board the ship", "this assessment has been made exclusively on the basis of provisions on which country's regulations on social security apply to a person."*

*"If we presume that the person **is living in Poland,** is **a Polish citizen** and that his **wages are paid** by a person, company or the like **in Poland**, he will be covered by the Polish regulations on social security when he is working on board a **ship flying the Danish flag** ..."*

"The fact that you consider yourselves the actual employer is not something that can be taken account of when considering the issue of which country's regulations on social security apply. In this area, the legislator has stated that the one who is important in this connection is the one who is actually paying the wages."

After having asked an elaborating question about the above, we receive a reply on 29 September 2014 which ultimately establishes:

"*Danish ship, domiciled in Poland, Polish citizen, wages paid from Poland = not covered by Danish social security, covered by Polish social security."*

"Danish ship, domiciled in Poland, Polish citizen, wages paid from Denmark = covered by Danish social security."

According to the above, no doubt should remain. If the EU seafarer in DIS is paid his wages from a local agency in his home country, he will not be entitled to receive child support from Denmark, but if the wages are paid directly by the actual employer in Denmark, he will be entitled to receive child support.

In our view, the possible right to receive child support from Denmark has not been communicated to EU seafarers on board Danish ships.

Social convention with the Philippines (and India)

On 11 September 2012, a convention text with an associated administrative agreement was ready to be signed, and it had been signed by Denmark. Since then, CO-SEA has – through a contact person in the Ministry of Social Affairs – asked at half-year intervals whether the convention had been signed in the Philippines. The answer has consistently been in anticipation of this or that.

Then, on 22 January 2016 we were told by the Ministry of Employment – to where this jurisdiction was moved after the last change of government – that the agreement had been signed and entered into force on 1 December 2015.

The guidelines for item 21 of the convention text states inter alia:
"According to article 11, paragraph 1, Philippine citizens shall be entitled to receive Danish social pension after three years' qualification on the same terms as those applicable to Danish citizens domiciled in Denmark when they meet a requirement for at least 12 months' employment under Danish law."

Article 11, paragraph 4, of the convention stipulates:
"In order to meet the requirement for 12 months' employment mentioned in paragraph 1 the following periods shall form the basis:

a) Employment periods during which contributions have been made for a member of the Danish Labour Market Supplementary Pension (ATP).
b) Periods before 1964 for which the person concerned can prove that he or she worked under Danish law."

On 22 January 2016, the contents of the above were confirmed by Payment Denmark, International Pension.

Non EU-seafarers have not previously paid contributions to the Danish Labour Market Supplementary Pension and item a) can be read as a requirement for payments before periods of employment on board Danish ships can be included in pension rights. The guidelines state, however, that other documentation of work in Denmark can be used. The entire section of the guidelines confirms that it is the actual work that is of importance and not the issue of ATP payments or not.

There will certainly be much to consider/understand and especially to communicate to the Philippine seafarers. Both previously and currently. The right to receive early retirement pension, etc.

It will be particularly interesting to see how the Danish authorities will, in reality, consider cases on early retirement pension, considering the Danish provisions on fitness for work tests, residual earning capacity and many other issues. We at CO-SEA have several evident cases from the Philippines to be considered as regards the right to receive early retirement pension under the social convention.

(It should be noted that we have a similar social convention with India, which became effective on 18 May 2011. We at CO-SEA have at least one case that should result in early retirement pension in India, but that has not yet been considered because we have simply not been aware of the convention previously.)

In the spring of 2016, CO-SEA has drawn up a two-page A5 information sheet about the Philippine and the Indian social convention, respectively. During a visit to Manila in June 2016, we met with a Vice-President of

SSS (Social Security System) and the Associated Marine Officers' and Seamen's Union of the Philippines to discuss the possibilities of informing seafarers (especially ex-seafarers) about the rights under the convention.

The Danish Association of Navigating Officers and the Danish Engineers' Association

In 2006/2007, the three associations from the DIS Contact Committee had a couple of meetings about the design of the system. Since then, we have not met and there is no cooperation as such between the organisations. On a few occasions (for instance in connection with the Danish Eastern High Court judgment), CO-SEA has forwarded material to the two others.

"Leopard"

12 January 2011 seizure
30 April 2013 release
(held hostage for 839 days)

On board:	1 Danish-Chilean (captain), 1 Dane (mate) and 4 Filipinos.
Shipowner:	Shipcraft
Technical management:	Nordane Shipping
Agent in Manila:	Imperial Shipcraft

Three books have been published on the basis of the many spectacular aspects of this hostage story (the shipowner, the daily "Ekstrabladet", the length of the hostage taking, the stay ashore in Somalia):
"De glemte gidsler" (The forgotten hostages) (e-book, "Ekstrabladet")
"Det beskidte spil" (The dirty game) (Eva Damsgård)
"Sørens Somalia" (Søren's Somalia) (Karsten Hermansen and Søren Lyngbjørn)

The Danish Maritime Accident Investigation Board published its report in October 2013.

CO-SEA waited for a couple of months after the release before we wrote to the four Filipinos and, subsequently, arranged a trip to Manila in July 2013, where we met for the first time together with our Liaison Officer (Elissa Lagda). We had a rather long joint meeting, during which we provided information about the Danish compensation system. Various family members took part in the meeting as well as the representative of the Catholic relief organisation that had kept contact with the families during the entire hostage situation.

Towards the end of the meeting, we received written proxies from all four of them.

From July 2013 until this day, we have been in close contact with the four of them, and during each Manila stay we meet several times. Two of them are domiciled in Manila, and the other two will come in from the provinces to stay for a couple of nights.

All in all, it is our impression that all those involved in Denmark – with a single exception – have done their utmost to treat the ex-hostages in an exquisite and committed manner. As regards the subsequent psychological and medical assistance, there is however no doubt that the two Danes benefitted from the Danish

health system and that the assistance offered to the Filipinos suffered from a lacking understanding of Philippine society.

THE DANISH MARITIME AUTHORITY

After 120 days' entitlement to sickness pay (basic pay) on the shipowner's account, the cases were transferred from Nordane Shipping to the Danish Maritime Authority (approx. on 1 September 2013).

However, the Danish Maritime Authority was soon faced with some serious dilemmas. The statements given in the medical papers that were acquired and that had been made by means of the Philippine agent Imperial Scanship are highly peculiar.

In a document signed on 25 September 2013, one of the four declared himself "fit for duty" counting from 26 June 2013! In an associated document, he declares that he and his family as of 26 June 2013 renounce any subsequent claim against Imperial Scanship.

Another one signs a medical report on 11 May 2013 stating that he is "partially fit for duty" (which is registered with the Consulate-General on 16 October 2013).

A wide number of medical reports about the four are available, all of which are more or less in agreement with an overall perception that the four do have certain recurrent problems after the hostage taking, but that they are more or less healthy after a few months and do not have any important PTSD symptoms. All medical documentation is procured in 2013 through Imperial Scanship.

In the Danish Maritime Authority, the responsible case worker became still more desperate, being nervous that the lacking payment of benefits would explode into a media story. According to the documentation available, payment of sickness benefits could not be legally justified.

During our visit to Manila in late January 2014, we visited the Danish Consulate-General on 28 January and told them that the four informed that they had been informed by SMS from the Consulate-General that they would now be invited by Imperial Scanship for new examinations (following a requisition to the Consulate-General from the Danish Maritime Authority). I did not understand why Imperial Scanship was still involved, considering the experience gained previously. The Consulate-General finally excused the faults made. Having been informed that the four of them were now together in Manila, the cases were dealt with extremely rapidly during the afternoon by a secretary at the Consulate-General, who personally visited the Makati Medical Center and arranged for all four of them to be examined the next day. Not until the medical reports from these examinations were available, could the Danish Maritime Authority establish sickness benefits cases retroactively from September.

The collection of medical documents available in 2013 was very comprehensive and very complex. However, we have no doubt that Imperial Scanship makes it very difficult for the Danish Maritime Authority to start the sickness benefits cases for the four. But the Danish Maritime Authority could also at a very early point in time have made it clear to the Consulate-General that a local agent taking care of its own special interests in relation to any Philippine Overseas Employment Administration compensations could not be involved in medical documentation for Denmark.

In general, some principles for the acquisition of medical documentation from the Philippines need to be established (see also the section on the Danish Shipowners' Accident Insurance Association).

The National Board of Industrial Injuries

The decisions made by the National Board of Industrial Injuries until now are as follows:

101154-AAA1 (ASK case no. incl. date of birth)

2 May 2014	ASK disability 10 per cent (for revision on 1 November 2014) (CO-SEA appeals)
28 November 2014	AST disability 15 per cent
16 March 2015	ASK EET 85 per cent, disability unchanged at 15 per cent
3 July 2015	CO-SEA appeals against disability

241254-AAA1

2 May 2014	ASK disability 10 per cent (for revision on 1 November 2014)
16 March 2015	ASK EET 90 per cent, disability unchanged at 10 per cent
28 May 2015	CO-SEA appeals against disability

050661-AAA1

2 May 2014	ASK disability 10 per cent (for revision on 1 November 2014) (CO-SEA appeals)
26 August 2014	AST maintains disability 10 per cent
16 March 2015	ASK EET 85 per cent, disability increased to 20 per cent (EET for later revision)
16 July 2015	ASK wish to have the disability recorded reconsidered

240373-AAA1

2 May 2014	ASK disability 10 per cent (CO-SEA appeals)
4 September 2014	AST disability increased from 10 per cent to 15 per cent (for revision on 1 November 2014)
16 March 2015	ASK EET 85 per cent (for revision on 1 November 2015)
8 September 2015	ASK wish to have the disability recorded reconsidered

The above-mentioned are the most important decisions and, as is evident, there are still some outstanding issues, especially as regards the disability compensation, which CO-SEA considers to be rather low. Quite subjectively, we would consider the 3 to be at a minimum of 20 per cent and one of them at a minimum of 30 per cent (according to our information, the two Danes have been found 25 per cent and 50 per cent disabled, respectively).

All in all, it is our assessment that the National Board of Industrial Injuries has been working in due time and seriously with the cases and that the amount of the disability compensation is based on lacking medical documentation from the Philippines.

SOS INTERNATIONAL

The Danish Maritime Authority requested introductory medical and psychological support for all six hostages from SOS International. CO-SEA has had a couple of meetings with the organisation and has an overall impression of a professionally working company. We have had some discussion as regards the recommendations

for the dental treatment of the Filipinos. While the two Danes were recommended to have dental implants, the four Filipinos were recommended ordinary dental treatment, incl. partial dental plates.

However, there was some confusion. It turned out that the two who could theoretically have benefitted from implants could not benefit from them without undergoing major surgical treatment that neither of them wanted.

It is open to discussion why SOS International was not chosen for further psychological assistance for the four after they had already become acquainted with them during the stay in Europe immediately after their release. Much is probably related to budgets for own voyages and stays.

MAKATI

On 29 January 2014, all four of them were thoroughly examined at the Makati Medical Center, and professional thorough declarations were drawn up, incl. mental reports with recommendations for medication. These declarations formed the basis of the further consideration by the Danish Maritime Authority and the National Board of Industrial Injuries.

Not until these medical reports had been received, could the Danish Maritime Authority establish sickness benefits cases for the four retroactively from early September.

SEAHEALTH

An unreasonably long period of time passed before the means were found and a decision was made on subsequent psychological assistance for the four. Who was to finance it and how?

In the view of CO-SEA, it should not have been a problem, considering the wording of the act on industrial injuries on treatment expenses, but some blame can presumably be imposed on the medical reports that were procured in 2013 by Imperial Scanship according to which none of the four had any particular problems. But, anyway!

We do not have insight into the considerations made by the parties involved (Danish Maritime Authority, Danish Shipowners' Accident Insurance Association, Danish Shipowners' Association), but after some palaver in Denmark funding was granted for a Seahealth project that is described in an offer for the Danish Maritime Authority (which must therefore be presumed to have financed it).

In February 2014, Seahealth informed the four that they would arrive in Manila on 20 and 21 March and discuss support sessions for a period of six months together with a Philippine trauma expert.

CO-SEA arranged associated visits to Manila on 15 March and 23 March anticipating any support.

The meetings on 20 and 21 March, which were also attended by the families of the four, had been arranged by and held at the hospital of the Associated Marine Officers' and Seamen's Union of the Philippines with additional attendance by an NBI psychologist (see later) and representatives from the Associated Marine Officers' and Seamen's Union of the Philippines, including the director of the hospital.

This initiative was taken very late, but it was good that it was taken and we have received only positive feedback from the four, also as regards the subsequent sessions with the Philippine trauma expert (Dr. June Pagaduan-Lopez).

DR. PAPA

Dr. Romel Papa, Chief Behavioral Science Division, National Bureau of Investigation (NBI), took part in the meetings with Seahealth in March 2014. The NBI actually corresponds to our Ministry of Justice and has, at an earlier point in time, been involved by the Associated Marine Officers' and Seamen's Union of the Philippines in the case that they have instigated against Imperial Scanship in Manila (a claim to lose the licence).

In 2015, Dr. Papa has been engaged by the Danish Shipowners' Accident Insurance Association for continued psychological assistance for the 3 of the 4, while the one who is living in a province further away from Manila has been assigned his own psychologist.

CO-SEA met with Dr. Papa during our recent visit to Manila in June 2015.

THE DANISH SHIPOWNERS' ACCIDENT INSURANCE ASSOCIATION

We cannot see through the role played or not played by the Danish Shipowners' Accident Insurance Association in relation to medical assistance or the lack hereof for the four Filipinos. In our comprehensive compilation of documents, the Danish Shipowners' Accident Insurance Association does actually not occur until in 2015.

IMPERIAL SCANSHIP

(See also the section on the Danish Maritime Authority.)

It is well documented that Imperial Scanship has been of poor help to the ex-hostages and the medical documentation drawn up upon their request in 2013 is quite odious.

An extract from a letter that was sent from Imperial Scanship's Danish owner, domiciled in Aalborg, to the Danish Maritime Authority is inserted here and speaks for itself in our view:

"Everything has been done by the shipowner and by Imperial Scanship for the four seafarers from Leopard after their arrival in the Philippines. They have received their full wages for the time they were held hostage in Somalia, and they have been paid full wages by the shipowner from their arrival home in May to early September, when the obligation of the shipowner stopped. During these months, they have furthermore received all medical assistance from a competent medical centre that has long ago declared them completely healthy. Furthermore, they have seen a psychologist on 11 June, a report from which session made it clear that none of them suffers from any mental disability. I forwarded that report to the Danish Maritime Authority last week.

We all agree that the four seafarers must have all the assistance that they need. But according to medical practitioners and a psychologist in Manila last year, the seafarers are healthy and no longer need any kind of additional treatment. Therefore, we do not want the official Danish system to be exploited now. It will be ex-

ploited, though, if CO-SEA succeeds with its plans to carry out a so-called test case according to which they will, inter alia, require 100 per cent disability compensation for the four seafarers."

The letter is forwarded by email on 28 February 2014, approx. one month later than a meeting that we attended as observers held at the Associated Marine Officers' and Seamen's Union of the Philippines where two representatives of Imperial's Manila office participated. We did not take part in any exchange of views (see the section on the Associated Marine Officers' and Seamen's Union of the Philippines).

It must be presumed that the interest of Imperial Scanship is focused on avoiding a situation where their insurance company (Pandiman) will have to pay local Philippine Overseas Employment Administration compensations.

DANISH BROADCASTING CORPORATION (DR)

After we had brought an article in CO-SEA's professional journal, we were contacted by a journalist from the documentary department of DR in October 2014. After a few conversation meetings, the editors decided to try to dig into the story about the four Filipinos, who had – contrary to the two Danes – more or less been neglected by the Danish press that had otherwise displayed much commitment on behalf of the Danes.

When CO-SEA planned a trip to Manila in mid-December 2014, the editors planned to have a journalist join us with a view to interviewing the Filipinos. CO-SEA accepted the role as a contact-maker. The journalist succeeded in getting an authorisation from the Filipinos during the visit. We did not have any closer cooperation, but we were staying at the same hotel.

The programme was transmitted as two episodes in late January 2015 and TV was involved as well. During the episodes, the various actors in Denmark were interviewed as well.

Following the programme, Mr. Christian Juhl (MP for the Red-Green Alliance/Enhedslisten) asked the Minister for Business and Growth some questions which were answered on 4 pages on 23 February 2015 and which subsequently resulted in a meeting held at the Danish Shipowners' Association with the Danish Maritime Authority and CO-SEA at the request of the Minister.

In our view, the above has no real contents. The question from the Minister is quite specifically whether the regulations cover psychological assistance in hostage situations (and how many of them do we have?). The undersigned also considers the meeting held at the request of the Minister as not having any contents in terms of the actual problems.

THE ASSOCIATED MARINE OFFICERS' AND SEAMEN'S UNION OF THE PHILIPPINES (AMOSUP)

AMOSUP was engaged on behalf of the four in late January 2014, when a meeting was held with the President of the insurance company Pandiman, two employees from Pandiman and two representatives from Imperial Scanship. CO-SEA and Elissa Lagda participated as observers. Most of the meeting was held in Tagalog and Elissa took the minutes for us.

CO-SEA was merely peripherally involved in the exchange of information/views, and the purpose was to reach disagreement minutes between AMOSUP and Pandiman for use in connection with a case before the

labour tribunal on the Philippine Overseas Employment Administration compensations (and seemingly against the agent's licence right).

The claims made by Pandiman were concordant with the medical reports, etc. procured through Imperial Scanship stating how fast the four had become fit for duty and that all the assistance necessary had been offered.

In connection with the case in Manila it can be mentioned as a matter of curiosity that a Philippine Overseas Employment Administration resolution from 2008 contains a remarkable provisions that differs from the provisions applicable to Danes.

"The higher pay (double pay) and higher death and disability compensation and benefits provided herein shall be limited to the duration of vessel's transit through the high risk zone ***and*** ***in case of detention of the seafarer."***

So far, after 2 years, there is not really any news in the cases of AMOSUP and the four have stated on many occasions that they are quite dissatisfied with the AMOSUP from which they never receive any news and the lawyer of which answers their requests only rarely.

On several occasions they have asked whether it is not possible to change to a private lawyer, but we do not consider it opportune to interfere with cases related to Philippine law, neither directly nor indirectly. Nevertheless, we still ask for a status on this case every time we visit Manila, and we are met with a chit-chat.

On the other hand, in March 2015 AMOSUP made indisputably exemplary efforts when offering assistance to Seahealth, and they also have a close cooperation with Dr. Papa from the NBI who has assisted all four with psychological assistance in 2015.

CONCLUDING REMARKS

If one is to draw some conclusions from the above of general importance to the case consideration for Filipinos, they are as follows:

* It is necessary to be aware that medical and hospital treatment is not free in the Philippines as in Denmark.
* How does the selection system work according to which medical practitioners and hospitals are used in the Philippines?
* Do we meet our responsibility under the act on payment of expenses for treatment and have the Philippine injured persons been sufficiently informed about their rights?
* How do we, on the other hand, ensure that the insurance company does not pay for a number of fictitious expenses?

On the basis of the essence of the above, we would like a clarification of how the Danish Shipowners' Accident Insurance Association administers their case authorisation from the National Board of Industrial Injuries with a view to a more detailed analysis.

The dilemmas concern the fact that we consider cases according to Danish law that are related to a society that we understand only superficially and in connection with which there is no transparency.

Portuguese seafarer – the municipality and the Danish tax authorities

This case, which also contains a case on industrial injury (291165-AAA!), is specifically mentioned in connection with the case consideration related to sickness benefits and tax calculation (the Municipality of Copenhagen and the Danish tax authorities).

It concerns a female Portuguese stewardess who concludes a contract with Mærsk on 25 April 2012 and who – following an accident – is reported sick on 17 September 2012. The first payment of sickness benefits from the municipality is made on 16 January 2013, with a general limitation of the duration until 31 October 2013 (52 weeks). When the limitation of the duration expires, the municipality does not consider the person reported sick to meet the conditions for an extension because the consequences of the injury do not, in the view of the municipality, preclude the person concerned from the "*wider labour market*".

In the above-mentioned case, CO-SEA files appeals, etc. and the entire correspondence is quite interesting as an example of a reply which is totally irrelevant to the question it purports to answer as regards, for example, information to the seafarer to merely turn up at the job centre. Thus, the person concerned receives a letter from the job centre – in Danish of course – on 31 January 2014 informing her that the sickness benefits have been discontinued as of 31 October 2013, but "*if you do not have any provision for a living, you can turn up at the job centre where we will help you find out which opportunities you have. Please contact us as soon as possible."*

THE TAX CASE

On 7 July 2014, CO-SEA complains about the tax assessment notices for 2013 in a joint letter to the Danish tax authorities and the Benefits Service in Copenhagen.

On 7 March 2014, the Danish tax authorities forward a tax assessment notice for 2013 on tax payable of DKK 59,829. According to the statement, tax is payable on an income of DKK 8,369,304 "*irrespective of her taxable income amounting to DKK 114,648. 'Fortunately', she is given 'a reduction for the period' of DKK 4,118,714, for which reason the outstanding tax amounts to a 'mere' DKK 56,981.34."!!!*

CO-SEA contacted the Danish tax authorities, where a cross and unwilling person finally declared that he would quite extraordinarily make a correction on our unorthodox enquiry.

On 28 May 2014, the Danish tax authorities issued a new tax assessment notice for 2013, which now resulted in an outstanding tax of DKK 30,387. The advance tax payment recorded is DKK 223.

CO-SEA acquired all the wage forms from documents (dp126) – a total of 11. It deserves to be mentioned that the seafarer has received only one of these forms and that they are, of course, in Danish.
The salary statements are messy, mixed-up and almost incomprehensible. Tax is deducted, and tax is repaid, and tax has not been deducted at all or mentioned in most salary statements. No tax has been retained at all net (from where the DKK 223 originates is not clear).

As an appendix to the complaint, a transcript from the seafarer's bank is enclosed, showing that amounts from Denmark have been inserted only on four occasions (corresponding to a total of DKK 114,000).

Finally, CO-SEA points to the following facts in the complaint:

* that the seafarer has never paid tax to Denmark and that, as a DIS seafarer, she is not acquainted with Danish regulations, rules or the language as such;
* that the statements from the Benefits Service have, with the exception of one, never been received and that they are, by the way, quite incomprehensible without being scrutinised;
* that the seafarer has received sickness benefits in good faith, is still reported sick and has had no provision for a living since 31 October 2013;
* that the lacking tax retention has been caused by faults made by the Benefits Service, which is the nearest one to bear the burden.

From the forwarding of the complaint on 7 July 2014, a little more than a year passes until 21 July 2015 before we receive a reply from the municipality. During this period, we regularly remind the municipality about the lacking reply and we receive several letters informing us that now something is about to happen. We also receive a new letter from the Danish tax authorities informing us that "*the basis for your tax for 2013*" has been changed, but it is not evident what change has been made. After much detective work, we find out that the "change consists in there being no change."!!!

The reply from the municipality (the Benefits Service in Copenhagen) states – in addition to various apologies for various faults made by the municipality – that:
"*This case is not one of the Benefits Service having made an erroneous payment that is required to be repaid* (because CO-SEA makes an analogy to the regulation on Condictio Indebeti). *On the contrary, the Benefits Service has paid too little in sickness benefits, cf. the above account of the adjustment. It is not possible for the Benefits Service to release ... from the outstanding tax arisen since it is solely an issue between ... and the Danish tax authorities.*
... is not considered to have suffered a loss entitling her to being compensated since she is liable to pay tax and should, consequently, in all circumstances have paid her outstanding tax.
The act on sickness benefits does not contain a legal basis for covering outstanding tax."

It was hardly difficult to predict that the municipality's answer would be a transfer of liability to the Danish tax authorities, which does of course not have any reason to withdraw the setting of a tax because the municipality messes things up.

We never did receive any reply as such from the Danish tax authorities unless a letter from the Danish tax authorities of 22 September 2014 with the headline "*Proposal: We do not assess that you can have your tax changed"* is considered a reply. Or maybe even more linguistically brilliant the letter of 22 October 2014, which means that "the change consists in there being no change."

On 3 August 2015, CO-SEA maintains its complaint to the municipality.

On 10 November 2015, the municipality writes that it cannot take upon itself the tax obligation of the Portuguese and that:

"Your complaint concerns an issue that is not covered by the complaint option of the Council of Appeal on Health and Safety at Work. Therefore, we must advise you to have the issue on compensation decided in a civil lawsuit, if relevant."

And this ended this case – unfortunately. In the view of the undersigned, it should have been taken to the courts because it contains many essential facets on the Danish authorities' responsibility for communication with foreigners in general and with EU citizens in particular who are engaged on DIS ships and who cannot be expected to have any knowledge about the Danish language, regulations, rules, tax, etc.

It is to a high degree the story about a computer-managed public authority without any independent thought about the fact that this is the exception that should be dealt with carefully (and at larger cost) until the computer-based part has become even wiser at specific case consideration.

COMPARABLE CASE FROM 2010
In a case with a Polish seafarer where CO-SEA complained to the Benefits Service in Copenhagen on 19 January 2011 where the Benefits Service requires DKK 2,256 to be repaid following a claim from the Danish tax authorities, the municipality writes on 17 September 2012:
"*We agree with your complaint. This means that we withdraw the claim from the Danish tax authorities and that ... will not have to repay DKK 2,256.*
(We have been informed by the Danish tax authorities that the amount has not been paid.)"

So, it is possible to get through with a complaint!

Polish seafarer – all issues
The second-most comprehensive, complicated case that we have been involved in is on behalf of a Polish seafarer. The case has an extent of four tightly filled wide A4 ring binders (the "Leopard" cases would probably fill half a score).

The person concerned was engaged as an able seaman for DFDS and was injured in a minor fall on 9 November 2007, which resulted in back problems (a slipped disc), and we are still corresponding with him in late 2015.

110372-AAA1 (case no. ASK)
The National Board of Industrial Injuries considered the disability to be at 5 per cent on 3 February 2009 and the loss of earning capacity <15 per cent with loss of earning capacity for revision on 1 July 2009.
On 16 September 2009, a loss of earning capacity of 70 per cent was awarded and on 23 December 2009, the disability was increased to 15 per cent.

For shorter and longer periods of time, the person concerned has used a local Polish lawyer, who has forwarded long letters to CO-SEA and who also, at one point in time, had an authorisation at the National Board of Industrial Injuries. CO-SEA has rejected to correspond with the lawyer and, thus, act as a teacher of the Danish law of torts (with subsequent bills for the seafarer), and we informed the injured person that either the lawyer withdrew his request for an authorisation in the National Board of Industrial Injuries or we finalised

the cases here. Subsequently, the lawyer withdrew, but it is clear that he was behind many subsequent letters to the Danish authorities that were just signed by the injured person.

Never have we experienced a desire to complain as in this case complex (that involves almost all Danish authorities, incl. the Ombudsman). It is, thus, illustrative that already now the Danish authorities receive long letters saying how decisive it is for him to be informed already now how his conditions of life will be when he has turned 67 years of age (today, he is 44 years old).

There have been case complexes related to the following:
Decisions by National Board of Industrial Injuries
Decisions by the Council of Appeal on Health and Safety at Work
Decisions related to early retirement pension
Decisions related to the calculation basis for sickness benefits
Decisions related to extension of sickness benefits
Decisions related to treatment expenses
The Danish tax authorities.

On a number of occasions, the injured person is writing on his own (or assisted by the lawyer) to various Danish authorities, and on a number of other occasions, CO-SEA has assisted with, for example, letters of complaint.

After having received several refusals to be granted early retirement pension (disability pension) where reference is made to Danish regulations according to which a Dane with a similar disability (a slipped disc) would not have been granted early retirement pension, the person concerns writes a rather long letter on 3 September 2015 to the Council of Appeal on Health and Safety at Work and the National Board of Industrial Injuries, informing about the differences between Danish and Polish society as regards the possibilities of getting a flex-job, about the person's willingness to go to Denmark to work for, for example, eight days a month, about the possibilities of a job for a Danish company in Poland, about his private situation of life, etc., and the letter finishes (translated by the authorities) as follows:
"*Dear Madam, I have explained everything and my entire situation to you as well as I can, and I ask the National Board of Industrial Injuries for another and more positive decision in my case."*

Formally, there is no doubt that the person concerned is not entitled to receive a Danish pension. On the other hand, this case illustrates better than any other which insurmountable problems arise when social rights need to be coordinated and correlated within the EU, from Eastern Europe to Western Europe, from Northern Europe to Southern Europe.

On 28 October 2015, the person injured writes the National Board of Industrial Injuries again, this time requesting to know exactly what will happen and which rights he will have when he turns 65 or 67 (i.e. in 20-30 years from now) when payment of the ongoing benefit from the National Board of Industrial Injuries (which is 45 per cent after capitalisation of 25 per cent) is discontinued. He has been engaged on Danish ships only for a few years (hereof almost 2 months in DFDS before the accident) and will be entitled to receive a modest fraction pension from Denmark. This will, without doubt, give rise to much writing during the next 20-40 years.

One of the most positive results of the wide number of cases that have been conducted by and on behalf of this "plaintiff" is a reversion of a decision made by the Municipality of Copenhagen concerning the basis for cal-

culating sickness benefits in 2010. On 5 March 2010, the municipality maintains a decision to continue paying sickness benefits from the municipality on the same basis as that on which the Danish Maritime Authority has calculated sickness benefits:

"*Payment of sickness benefits to seafarers is calculated on the basis of the monthly basic pay, possibly including a seniority allowance. Your monthly basic pay amounted to USD 627, which corresponds to DKK 3020 a month."* (See also the Danish Maritime Authority)

This decision is sent back for renewed consideration by the Employment Appeals Board on 26 May 2010, whereafter the municipality revises the calculation basis in a new decision on 30 June 2010 according to section 47 of the act on sickness benefits.
"*All elements of the wages are considered to be covered by the provisions of section 47 of the act on benefits ...",* and subsequently the basis for making the calculation was set at DKK 11,502.

A complete novel is hidden behind this story, and it could be interesting to visit and interview the person concerned. At one point in time, it was stated (by himself) that his incapacity for work was now also caused by a strong excess weight, which was a consequence of the industrial accident because he had had difficulties moving since then.

Spanish seafarer – old-age pension

Since 2006, a Spanish seafarer has had comprehensive correspondence with Payment Denmark (International Pension and Social Security) about the size of his fraction pension from Denmark (14/40 or 15/40). Much documentation is available in this case in the form of salary statements and articles of agreement, but the documentation is not always quite consistent or individual documents lack essential information.

On 7 January 2015, the Council of Appeal on Health and Safety at Work decides that the pension entitlement is 14/40, which is the same decision as the one made by Payment Denmark.

For quite some time, the person concerned has been assisted by the Spanish Embassy in Copenhagen, and a very helpful and kind Danish embassy secretary recommends that he contacts CO-SEA.

On 20 February 2015, we receive an authorisation in the case as well as subsequently all documentation from both the person concerned and Payment Denmark.

Two different calculation sheets are available in the case.

The first one is presumably from Payment Denmark (E205 DK), which sums up the seagoing service to 14 years, 3 months and 25 days.

The other one has possibly been generated in the Danish Maritime Authority and this sums up the information to 15 years, 10 months and 1 day. The former seafarer stubbornly and consistently adheres to this summing up and encloses the large number of salary statements and articles of agreement. A scrutiny of this summing up shows, however, that a period of 1 year, 9 months and 23 days has been included erroneously, and solely for this reason the likelihood of being entitled to a 15/40 pension is very little; but it cannot, however, be rejected completely on the basis of the information available.

We have shelved the case and the person concerned is certainly not satisfied. However, now and again we must all come to a compromise.

Concluding remarks

It is presumably clear from this status report that the work related to foreign countries is full of challenges vis-à-vis the Danish authorities.

Among the most important tasks in 2016, we have noted the following:

* Hopefully, an end to the struggle with the Danish Shipowners' Accident Insurance Association about set-offs.
* Follow-up on issues related to the social convention with the Philippines. Circulation of general information (group of persons?).
  Circulation of special information to everyone from whom we have had an authorisation.
  Circulation of special information to those whom we believe should apply for early retirement pension.
* Similar follow-up in relation to India.
* Clarification as regards the calculation of sickness benefits from the Danish Maritime Authority.
* Clarification as regards treatment expenses in relation to section 15 of the act on industrial injuries.
* Procedures for selecting a medical practitioner.
* Update of informative brochures (new versions).
* ATP payments.
* Child support for EU citizens.

Ole Strandberg
CO-SEA
24 January 2016

Additions
3 August 2016